



**Department of
Housing Preservation
& Development**

TESTIMONY OF THE DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT TO THE CITY COUNCIL HOUSING AND BUILDINGS
COMMITTEE – MONDAY, JANUARY 30TH, 2012 – 1pm

Good afternoon, Chairman Dilan and members of the Housing and Buildings Committee. I am Mathew Wambua, Commissioner of the New York City Department of Housing Preservation and Development, and with me is RuthAnne Visnauskas, Deputy Commissioner of Development. Thank you for the opportunity to discuss the merits of Introduction 730 sponsored by Council Member Recchia relating to the disclosure of information associated with HPD's development of affordable housing in New York City.

Let me state unequivocally that I am very supportive of exploring ways in which the agency can educate the public and our partners in government on HPD operations. As the nation's largest developer of affordable housing, it is essential that the public knows how local, state, and federal funds are spent to produce apartments and homes for low and moderate income New Yorkers seeking housing. I believe this legislation represents a step towards the shared goal of enhanced transparency for the Agency, and I hope to use today's hearing as a means of refining the types of information we should share and in what ways.

Before I comment on the details of the legislation, I would like to give you a brief overview of HPD operations with regards to affordable housing development. The main function of HPD's Office of Development, run by Deputy Commissioner Visnauskas, is to create and preserve affordable housing throughout the five boroughs. The agency achieves this end through a variety of means, including low interest loans for rehabilitation and new construction, federal low income housing tax credits, and real property tax exemptions. HPD works with non-profit and for-profit developers who choose their own general contractors (or act as their own general contractor) and assemble their own teams for their projects.

Developers are typically chosen through a variety of means: by application, by Request For Proposals, or by Requests for Qualifications.

Developers are selected through applications in programs like the 8A Loan Programs where owners of existing apartment buildings seek funding for

renovation work to preserve and upgrade the property. In those instances, landlords submit applications to HPD (accessible on nyc.gov/hpd) which are reviewed by the agency based on specific programmatic requirements. For certain programs, applicants must meet Federal program guidelines as well.

Other HPD programs utilize a Request For Qualifications (RFQ) process under which prospective developers submit their qualifications to the agency before any specific project has been identified. If their qualifications are satisfactory, they are included on a pre-qualified list of firms that may be eligible to develop certain types of future projects. For example, the Third Party Transfer Program uses a rolling RFQ to create such a pre-qualified list. Properties in the program are clustered into projects that are assigned to prequalified developers on the list according to capacity, geography, and experience.

Developers are generally selected through Requests for Proposals (RFP) in programs where HPD conveys City-owned land for housing development. When HPD determines that a particular City-owned property is appropriate for housing development, the agency generally issues a RFP to select a developer for the site. Development teams submit proposals that generally consist of two parts. First, just as they would do in an RFQ, they submit materials detailing their experience, capacity, and financial data to establish their qualification to develop the project. Second, they submit information regarding how they would develop the site, which often involves things like design and affordability. The RFP specifies what they must submit on both subjects. Once all proposals are received, the agency selects the best one based on the criteria in the RFP, which generally involve a combination of both the qualifications of the developer and the quality of its plan for the site. The project and the conveyance of the site to the developer must also be approved by the City Council and the Mayor after public hearings and, where applicable, reviewed by the local Community Board, Borough President, and the City Planning Commission under the City's Uniform Land Use Review Procedure (ULURP). Developers are also selected through RFPs in projects involving large scale housing or mixed use developments.

These, along with the tax credit and tax exemption programs, represent the bulk of HPD's development operations. Each program, with its own specific set of criteria governing eligibility and allocation, provides HPD with the resources and tools to achieve the Mayor's New Marketplace Housing Plan goal of 165,000 new or preserved units of affordable housing by 2014.

In the same way that I just took you through our process, I believe that with more comprehensive reporting, HPD can better illustrate to the general public which developers the Agency has selected to work with. What a transparency bill should not be misconstrued as, though, is a means for undermining the Agency's funding decisions, negatively attacking developers that have been selected, or embarrassing those that were not selected. It is essential that together we craft a bill that achieves better transparency without those unintended consequences.

Intro 730 requires a number of new disclosures about the developers selected by HPD for development projects. We agree that we should report a general description of each project we closed in a particular fiscal year, including basic details of the developing entity and the specific funding sources. Anything further, however, seems to run afoul of the primary intent of the legislation and might produce unintended negative consequences.

Intro 730 also requires detailed monthly reporting on all HPD development projects. Specific provisions of the legislation go as far as asking for detailed information on developers who HPD has either denied, revoked, or suspended pre-qualification within the past five years. First, HPD does not maintain this information, so retrieval of these details would be impossible to recover from the past five years. Second, the benefit of disclosing this information is not immediately apparent. HPD staff is always available to discuss with applicants why they were not selected and how to improve their competitiveness in the future. Third, any potential benefit of such disclosure is greatly outweighed by its potential unintended consequences. Good developers may elect not to seek affordable housing work if they know that doing so risks harm to their reputations if they are not selected. Fourth, such disclosure could subject the City to increased litigation risks.

Similarly, the agency has concerns about the requirement to make the taxpayer identification numbers of developers, contractors, and subcontractors as well as their principal officers and principal owners available online. Making taxpayer identification numbers publicly available is both unnecessary and could facilitate illegal activity and place each of these entities at risk for identity theft.

Finally, I think it is important to acknowledge the heavy administrative burden Intro 730 as written would place on the agency. HPD's personnel has been reduced by more than 15% over the past three years. As you know, HPD's budget is comprised mostly of funding sources generated from the Federal government. Given the most recent cuts to HOME (46%) and Community Development Block Grant (8%), our budget for core agency functions, like housing development and code enforcement, have been severely impacted. We estimate these cuts will leave the agency with a hole of almost \$90 million in the upcoming budget cycle requiring the agency to reduce our personnel by another 15%, resulting in a total reduction of approximately 30%. This translates into existing personnel assuming the work load of often two or three employees. Now more than ever it is essential that we work with our partners in the Council and elsewhere in government to mitigate the impact of these cuts to the agency.

We thank you for your time and we are happy to respond to any questions you might have.

**Intro 730: Testimony of Commissioner
Mathew M. Wambua**

January 30, 2012

Opening

HPD is Supportive of Exploring Ways in which the Agency can educate the Public and our Partners in Government on HPD Operations

- As the nation's largest developer of affordable housing, it is essential that the public knows how local, state, and federal funds are spent to produce apartments and homes for low and moderate income New Yorkers seeking housing.
- This legislation represents a step towards the shared goal of enhanced transparency for the Agency, and I hope to use today's hearing as a means of refining the types of information we should share and in what ways.

Overview of HPD Development Program

HPD's Office of Development Creates and Preserves Affordable Housing In New York City.

Creating these new units of Affordable Housing are achieved through a variety of means:

- low interest loans for rehabilitation and new construction
- federal low income housing tax credits
- real property tax exemptions
- HPD works with non-profit and for-profit developers who choose their own general contractors (or act as their own general contractor) and assemble their own teams for their projects.

How Are Developers Selected?

- New Construction and Preservation Loans
 - Developers are selected through applications in programs like the 8A Loan Program where owners of existing apartment buildings seek funding for renovation work to preserve and upgrade the property. In those instances, landlords submit applications to HPD (accessible on nyc.gov/hpd) which are reviewed by the agency based on specific programmatic requirements. For certain programs, applicants must meet Federal program guidelines as well.
- Request for Qualifications
 - Other HPD programs utilize a Request For Qualifications (RFQ) process under which prospective developers submit their qualifications to the agency before any specific project has been identified. If their qualifications are satisfactory, they are included on a pre-qualified list of firms that may be eligible to develop certain types of future projects. For example, the Third Party Transfer Program uses a rolling RFQ to create such a pre-qualified list. Properties in the program are clustered into projects that are assigned to prequalified developers on the list according to capacity, geography, and experience.



Overview of HPD Development Program

How Are Developers Selected? (cont)

- Requests for Proposals
 - Developers are generally selected through Requests for Proposals (RFP) in programs where HPD conveys City-owned land for housing development.
 - When HPD determines that a particular City-owned property is appropriate for housing development, the agency generally issues a Request For Proposals (RFP) to select a developer for the site. Development teams submit proposals that generally consist of two parts.
 - First, just as they would do in an RFQ, they submit materials detailing their experience, capacity, and financial data to establish their qualification to develop the project.
 - Second, they submit information regarding how they would develop the site, which often involves things like design and affordability. The RFP specifies what they must submit on both subjects.
 - Once all proposals are received, the agency selects the best one based on the criteria in the RFP, which generally involve a combination of both the qualifications of the developer and the quality of its plan for the site.
 - The project and the conveyance of the site to the developer must also be approved by the City Council and the Mayor after public hearings and, where applicable, reviewed by the local Community Board, Borough President, and the City Planning Commission under the City's Uniform Land Use Review Procedure (ULURP). Developers are also selected through RFPs in projects involving large scale housing or mixed use developments.



Overview of HPD Development Program

How Are Developers Selected? (cont)

- These, along with the tax credit and tax exemption programs, represent the bulk of HPD's development operations. Each program, with its own specific set of criteria governing eligibility and allocation, provides HPD with the resources and tools to achieve the Mayor's New Marketplace Housing Plan goal of 165,000 new or preserved units of affordable housing by 2014.

HPD: Intro 730

HPD is supportive of NYC Council Goal to Make Agency Operations Transparent

- In the same way that I just took you through our process, I believe that with more comprehensive reporting, HPD can better illustrate to the general public which developers the Agency has selected to work with.
- What a transparency bill should not be misconstrued as, though, is a means for undermining the Agency's funding decisions, negatively attacking developers that have been selected, or embarrassing those that were not selected.
- It is essential that together we craft a bill that achieves better transparency without those unintended consequences.

The agency looks forward to working with the Council to craft legislation that will responsibly report details including:

- Intro 730 requires a number of new disclosures about the developers selected by HPD for development projects. We agree that we should report a general description of each project we closed in a particular fiscal year, including basic details of the developing entity and the specific funding sources.
- Anything further, however, seems to run afoul of the primary intent of the legislation and might produce unintended negative consequences.

HPD: Intro 730

Certain Requirements Proposed by Intro 730 might have Unintended

Consequences For Agency and Developers

- Intro 730 also requires detailed information on developers who HPD has either denied, revoked, or suspended pre-qualification within the past five years.
 - First, HPD does not maintain this information, so retrieval of these details would be impossible to recover from the past five years.
 - Second, the benefit of disclosing this information is not immediately apparent. HPD staff is always available to discuss with applicants why they were not selected and how to improve their competitiveness in the future.
 - Third, any potential benefit of such disclosure is greatly outweighed by its potential unintended consequences. Good developers may elect not to seek affordable housing work if they know that doing so risks harm to their reputations if they are not selected.
 - Fourth, such disclosure could subject the City to increased litigation risks.
- Similarly, the agency has concerns about the requirement to make the taxpayer identification numbers of developers, contractors, and subcontractors as well as their principal officers and principal owners available online. Making taxpayer identification numbers publicly available is both unnecessary and could facilitate illegal activity and place each of these entities at risk for identity theft.



HPD: Intro 730

Certain Requirements Proposed by Intro 730 might have Unintended

Consequences For Agency and

Developers

- Finally, I think it is important to acknowledge the heavy administrative burden Intro 730 as written would place on the agency. HPD's personnel has been reduced by more than 15% over the past three years. As you know, HPD's budget is comprised mostly of funding sources generated from the Federal government.
- Given the most recent cuts to HOME (46%) and Community Development Block Grant (8%), our budget for core agency functions, like housing development and code enforcement, have been severely impacted.
- We estimate these cuts will leave the agency with a hole of almost \$90 million in the upcoming budget cycle requiring the agency to reduce our personnel by another 15%, resulting in a total reduction of approximately 30%.
- This translates into existing personnel assuming the work load of often two or three employees.
- Now more than ever it is essential that we work with our partners in the Council and elsewhere in government to mitigate the impact of these cuts to the agency.



For the record

THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

**Testimony of Manhattan Borough President Scott M. Stringer
before the Committee on Housing and Buildings**

Regarding Local Law Int. 730 to amend the administrative code of the city of New York, in relation to the disclosure of certain information regarding certain construction projects

January 30, 2012

Thank you Chairman Dilan and members of the Committee on Housing and Buildings for the opportunity to testify at this important hearing.

The purpose of my testimony is simple, to voice strong support for the passage of Intro 730 introduced by Councilmember Dominic Recchia which would require the City to post new information related to the pre-qualification of vendors for HPD construction projects. Other new disclosures that Intro 730 will mandate, including the additional release of project identifiers, project descriptions and locations, dollar amounts related to individual contracts and details related to the manner in which developers are selected are important new reforms.

As I have noted on several occasions before the New York City Council, the public always benefits from a full and complete disclosure of all types of City contracts, not just those that are limited to the creation of new housing units. I believe that Intro 730 makes important strides towards achieving that goal. I urge all members of the New York City Council to support this legislation and pass it without delay.

Thank you again for the opportunity to testify at this important hearing.



**Testimony of LISC NYC
On Intro 730
NYC Council Committee on Housing and Buildings
Jan 30, 2012**

My name is Sarah Hovde and I am the Director of Research and Policy for the NYC Program of the Local Initiatives Support Corporation (LISC). LISC is a national community development intermediary organization that helps community-based groups to transform distressed communities and neighborhoods into healthy ones by providing capital, technical expertise, training and information. In NYC, LISC has provided over \$160 million in loans and grants and over \$1.7 billion in equity to more than 75 community development corporations (CDCs), resulting in the development of close to 30,000 units of affordable housing in Harlem, the South Bronx, and Brooklyn.

Intro 730 would require HPD to establish a new, online public database through which it would be required to provide detailed information about any housing project receiving more than \$100,000 in city financial assistance. Information required to be provided would include detailed information about each developer, contractor and subcontractor, including identifying information; original, revised and actual expenditures; selection process; whether the contract is subject to prevailing wage laws; and all complaints, allegations and judgments regarding violation of prevailing wage requirements filed against the contractor within the last five years. In addition, all contractors and subcontractors – whether or not their contracts are subject to prevailing wage requirements – would be required to report weekly wage data for every employee working on the project.

While the desire for greater transparency in HPD's selection process for developers and contractors, and in its allocation of resources to projects, is understandable, we don't believe that the process proposed by Intro 730 is the best way to achieve this goal. We also believe the legislation as written would have negative consequences.

The most notable negative effect, in terms of the provisions that would affect projects undertaken by LISC NYC's local development partners, is the requirement for weekly wage reporting on all projects. For projects that are not subject to prevailing wage requirements (which many of the projects undertaken by our local partners are not) the bill creates a new reporting requirement where none existed before. We fear that the administrative burden that this new requirement would create would impose a significant burden on contractors – particularly smaller ones – who

would have difficulty complying, and who are still struggling with the impacts of the economic downturn. For projects that are subject to prevailing wage requirements, HPD already has a reporting system in place. If auditing and verification of contractors' reported wages under this system needs to be strengthened, then this issue should be addressed directly, rather than requiring the creation of a new, duplicative administrative reporting structure.

The creation of the online database described in Intro 730 would also seem to require a fairly significant dedication of administrative resources by HPD; and we worry about creating expensive new mandates on the agency in this time of shrinking budgets. We are sympathetic to the desire for greater transparency in HPD's process for developer and contractor selection, and in allocation of city resources to projects; but we wonder whether this goal could be achieved in a way that is less expensive and time-consuming. For example, the way Intro 730 currently reads would seem to require constant, almost real-time updating of project and contract cost data, which can fluctuate over the course of the contract period. A better approach might be to have HPD publish some kind of annual report, summarizing much of the same information, on all projects reaching construction closing or completion during the previous year. We encourage the sponsors of this bill to engage HPD in a conversation about how greater transparency can be achieved in the most efficient manner possible.

Thank you for the opportunity to testify.



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*lead
 Intro
 Records*

***Foreclosures
 Public Hearing
 City Hall
 New York, New York***

~~January 30, 2012~~
January 30, 2012

Urban Justice Center - Community Development Project

Testimony before the Housing and Buildings Committee

Good morning. My name is Harvey Epstein; I am the Project Director of the Community Development Project at the Urban Justice Center. The Urban Justice Center is a project-based umbrella legal services and advocacy organization serving New York City residents. In the past 25 years, the Urban Justice Center has provided direct legal assistance, systemic advocacy and community education to low and moderate income New Yorkers. The Community Development Project (CDP) of the Urban Justice Center formed in September 2001 to provide legal, technical, research and policy assistance to grassroots community groups engaged in a wide range of community development efforts throughout New York City. CDP strengthens the impact of grassroots organizations in New York City's low-income and other excluded communities. We partner with community organizations to win legal cases, publish community-driven research reports, assist with the formation of new organizations and cooperatives, and provide technical and transactional assistance in support of their work towards social justice.

The Urban Justice Center represents many community based organizations that wish develop or support the development of affordable housing in their neighborhoods. Over the past few years, these organizations have questioned the decision HPD has made about who were given the opportunity to develop a housing project. Many times, the chosen developer did not propose to develop the most affordable housing at the lowest cost. This bill deals directly with those issues.

This bill Intro 730 of 2011 currently pending before the New York City Council is important protections for low income residents. Government functions best under the sunshine. The purpose of all the sunshine laws is to prevent abuse. Unfortunately, throughout history, individuals has taken advantage of their positions in government and used their position to steer government contracts. This occurred in 2011 with HPD. Because HPD has so much discretion in whom to allow developing which housing projects, the system is ripe for fraud. In 2011, Wendell Walters was arrested for steering development projects for a financial kickback. In

addition, there have been situations in which individuals who have political power have had undue influence over the outcome of who develops a project. Currently, if you question what HPD has decided in relationship to a development project, you have to submit a freedom of information request to HPD, which takes at least a month to get a response. If all the information is not included in that response, you must ask for additional documents, which takes another month. After all that time and effort, none of the information is available for the public to review.

This bill takes an important step in addressing these problems. First, it only requires disclosure for projects exceeding \$100,000, which is a fair starting point for disclosure. Second, HPD will be required to create a list of prequalified criteria and then judge prequalified applicants on this same criteria. If HPD selects a developer through a competitive bid process, they are required to indicate who the lowest responsible bidder is, and if that was not the entity selected for the development project, explain why they were not selected. Next, the bill will require HPD and the potential developer to disclose who the principles are involved in each project. HPD will be required to make available online to members of the public the list of prequalified and selected applicants. HPD will be further required to release information about how much government financing is involved in the development project. Moreover, HPD will be required to submit information on net and gross pay of each employee of the developer and subcontractor to ensure they are complying with New York Laws.

So why this bill important?

First, passing this bill into law will effectively protect housing in New York City.

Second, it will allow community based organizations to be aware of the selection criteria in local development projects and compete in a fair open way.

Finally, it will limit opportunities for fraud and corruption.

Thank you for having a hearing today on this bill and giving me the opportunity to testify on this important issue.

**JOINT TESTIMONY OF THE QUEENS & BRONX BUILDING ASSOCIATION AND
THE BUILDING INDUSTRY ASSOCIATION OF NEW YORK CITY, INC. BEFORE
THE CITY COUNCIL COMMITTEE ON HOUSING & BUILDINGS
JANUARY 30, 2012**

GOOD DAY. MY NAME IS ROBERT ALTMAN AND I AM THE LEGISLATIVE CONSULTANT TO THE QUEENS & BRONX BUILDING ASSOCIATION AND THE BUILDING INDUSTRY ASSOCIATION OF NEW YORK CITY, INC., TWO LOCAL CHAPTERS OF THE NEW YORK STATE BUILDERS ASSOCIATION.

I AM HERE TODAY TO OPPOSE INTRO. 730.

AS YOU MAY BE AWARE, THE NEW YORK STATE ASSOCIATION FOR AFFORDABLE HOUSING HAS OPPOSED THE LEGISLATION FOR MULTIPLE REASONS, WHICH I AM LISTING HERE IN THIS WRITTEN TESTIMONY:

- Intro 730 places a tremendous administrative burden on smaller contractors, subcontractors and MWBE firms, including requiring weekly wage reporting. While larger contractors may have the capacity for project by project accounting, this mandate penalizes smaller community-based firms.
- Intro 730 requires the creation of an expensive public database without providing the resources to implement it. Much of this information is already available: HPD should not be required to provide information that DOB already provides.
- Targeting the affordable housing industry with these extraordinary reporting requirements is unnecessary – affordable housing developers are closely monitored by multiple government agencies, lenders and investors. Affordable housing construction in New York is safer than other residential construction.

MOREOVER, THE BILL SUFFERS FROM A SERIOUS DEFECT; IT PROVIDES THE TAX IDENTIFICATION NUMBER OF INDIVIDUALS AND BUSINESS ENTITIES, MAKING THE IDENTIFIED PERSONS AND BUSINESSES EXTREMELY PRONE TO IDENTITY THEFT. WHILE NOT AS WIDELY PUBLICIZED AS PERSONAL IDENTITY

THEFT, BUSINESS IDENTITY THEFT EXISTS ALL THE SAME. WHY WOULD THE COUNCIL LEGISLATE AN INVITATION TO ADDITIONAL IDENTITY THEFT.

I UNDERSTAND THAT THIS BILL WAS INTRODUCED AS AN ANTI-CORRUPTION MEASURE, BUT FRANKLY, I DON'T KNOW IF IT WILL DO ANY GOOD. CORRUPT MINDS WILL SIMPLY THINK OF A NEW WAY TO GET AROUND THE SYSTEM AND INSTEAD THE GOOD GUYS AND THE TAXPAYER WILL BE PUNISHED AS THE REPORTING MECHANISMS WITHIN THIS BILL IS SURE TO RAISE COSTS FOR SMALLER OUTFITS AS THEY ATTEMPT TO COMPLY WITH SOMETHING THAT WAS NOT THEIR FAULT. AND OF COURSE, THE TAXPAYER ULTIMATELY PAYS THIS HIGHER COST FOR AFFORDABLE HOUSING.

MOREOVER, IN AN ERA WHERE GOVERNMENT IS TRYING TO REDUCE REGULATION, THE COUNCIL NOW SEEKS TO ADD TO IT, GOING AGAINST THE TREND IN GOVERNMENT. I PREVIOUSLY WORKED FOR A LAW FIRM THAT SPECIALIZED IN AFFORDABLE HOUSING. AFTER ABOUT A YEAR OF WORKING ON THEIR PROJECTS, I STATED TO A PARTNER THAT I WAS AMAZED THAT IT TOOK A LOT OF MONEY TO DO "AFFORDABLE HOUSING" DUE TO ALL THE GOVERNMENT REGULATIONS. THE PARTNER SIGHED AND STATED IT WAS TRUE AND FRUSTRATING. WHY THE COUNCIL WISHES TO ADD TO THE REGULATION AND COST IS BEYOND ME.



Inspection Report

Mr. Antonio Castillo

Property Address:
1845 Phelan Place
Bronx NY 10453



Certified Home Inspections

Dominick Esposito 16000043389
CertifiedHomeInspectionsNY@yahoo.com

Table of Contents

<u>Cover Page</u>	<u>0</u>
<u>Table of Contents.....</u>	<u>0</u>
<u>Intro Page.....</u>	<u>0</u>
<u>1 Roofing</u>	<u>5</u>
<u>General Summary</u>	<u>0</u>

Date: 8/25/2011	Time: 9:00am	Report ID: 82511-A
Property: 1845 Phelan Place Bronx NY 10453	Customer: Mr. Antonio Castillo	Real Estate Professional:

Comment Key or Definitions

The following definitions of comment descriptions represent this inspection report. All comments by the inspector should be considered before purchasing this home. Any recommendations by the inspector to repair or replace suggests a second opinion or further inspection by a qualified contractor. All costs associated with further inspection fees and repair or replacement of item, component or unit should be considered before you purchase the property.

Inspected (IN) = I visually observed the item, component or unit and if no other comments were made then it appeared to be functioning as intended allowing for normal wear and tear.

Not Inspected (NI) = I did not inspect this item, component or unit and made no representations of whether or not it was functioning as intended and will state a reason for not inspecting.

Not Present (NP) = This item, component or unit is not in this home or building.

Repair or Replace (RR) = The item, component or unit is not functioning as intended, or needs further inspection by a qualified contractor. Items, components or units that can be repaired to satisfactory condition may not need replacement.

Standards of Practice:

INACHI National Association of Certified Multi-family
Home Inspectors

Type of building:

Approximate age of building:

Under 5 Years

Temperature:

Over 65

Weather:

Clear

Ground/Soil surface condition:

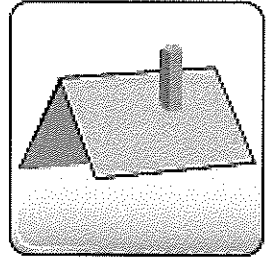
Dry

Rain in last 3 days:

No

1. Roofing

The home inspector shall observe: Roof covering; Roof drainage systems; Flashings; Skylights, chimneys, and roof penetrations; and Signs of leaks or abnormal condensation on building components. The home inspector shall: Describe the type of roof covering materials; and Report the methods used to observe the roofing. The home inspector is not required to: Walk on the roofing; or Observe attached accessories including but not limited to solar systems, antennae, and lightning arrestors.



Styles & Materials

Roof Covering:

Viewed roof covering from:

Sky Light(s):

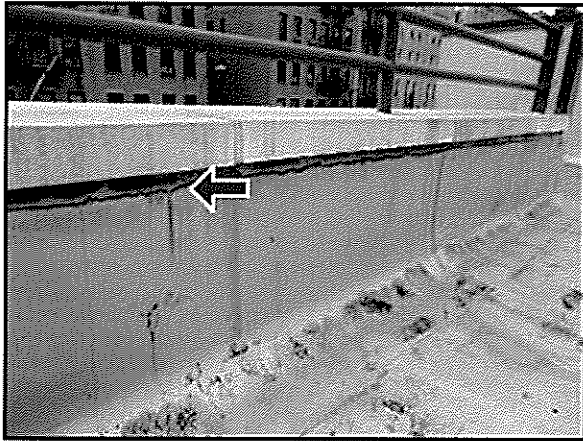
Chimney (exterior):

Items

1.0 ROOF COVERINGS

Repair or Replace

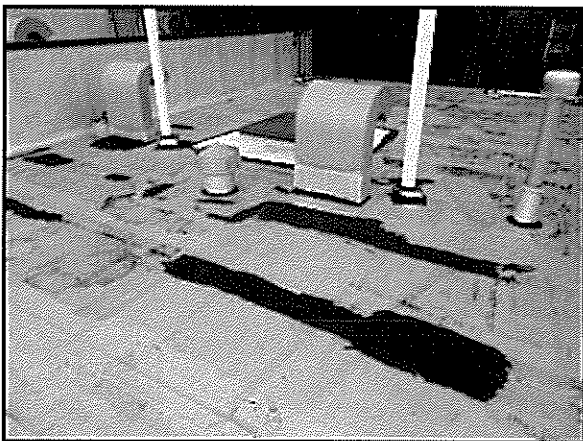
- ☒ The roofing on this home appears to be about 5 to 10 years old. The pitch of the roof is barely visible and not existent on the back 20 feet. There is pooling occurring in this area on all of these roofs. There is a lip on the back edge preventing the water to run off correctly. There is also a opening in membrane on edge which will allow water to back up and enter the home.



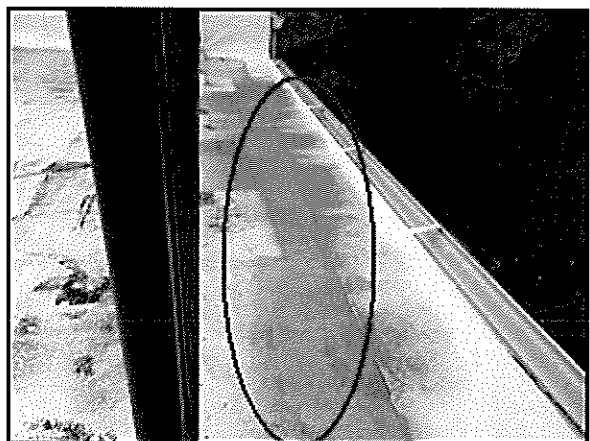
1.0 Picture 1



1.0 Picture 2



1.0 Picture 3

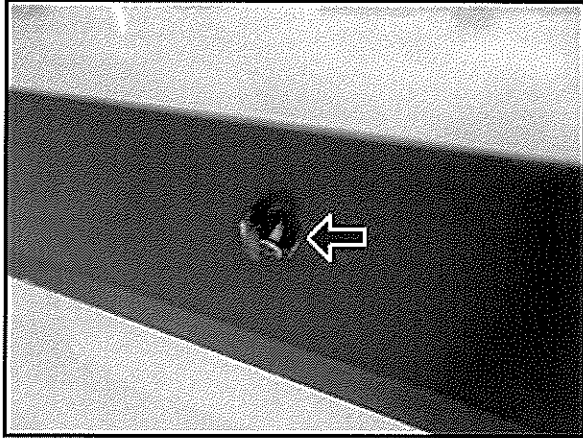


1.0 Picture 4

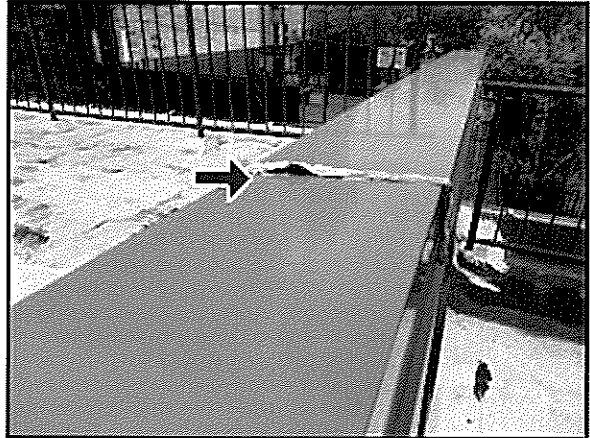
1.1 FLASHINGS

Repair or Replace

- ☒ The metal coping needs to be sealed and the screws needs to be tightened and sealed to prevent leaking.



1.1 Picture 1

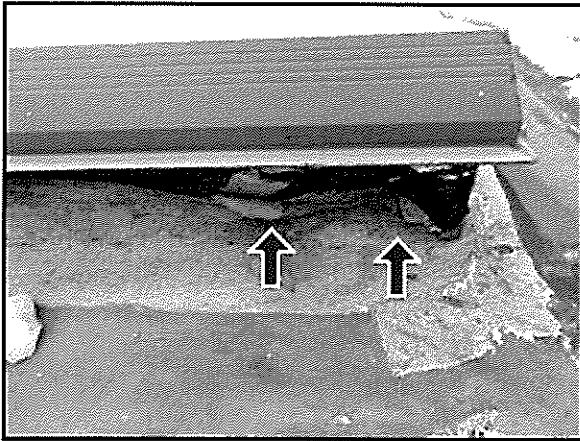


1.1 Picture 2

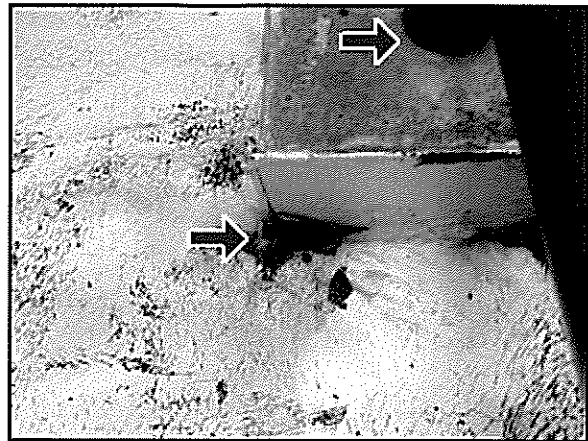
1.2 SKYLIGHTS, CHIMNEYS AND ROOF PENETRATIONS

Repair or Replace

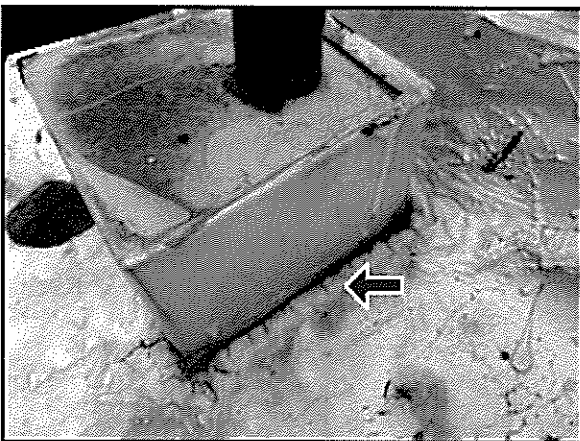
☒ There is visible evidence of water under membrane and wood lifting at seams on roof. The railings, skylights, and waste vent pipes also are leaking. There is evidence on the interior bathrooms of this area leaking. To fasten the loose decking and repair leaking may require removing the roofing in these areas.



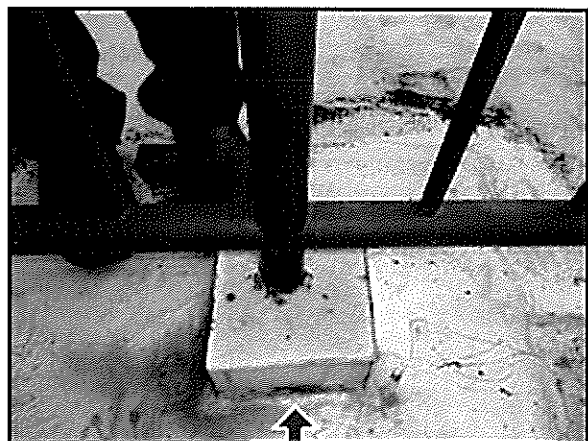
1.2 Picture 1



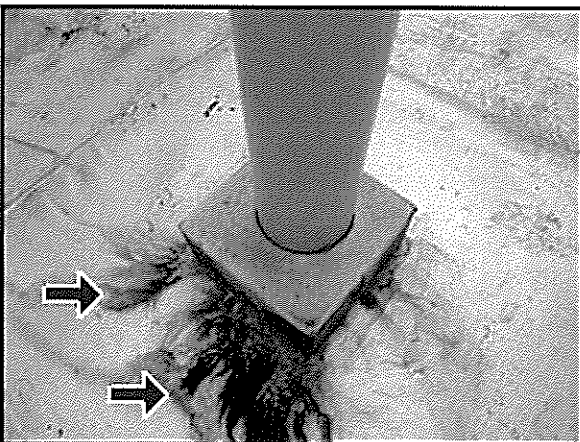
1.2 Picture 2



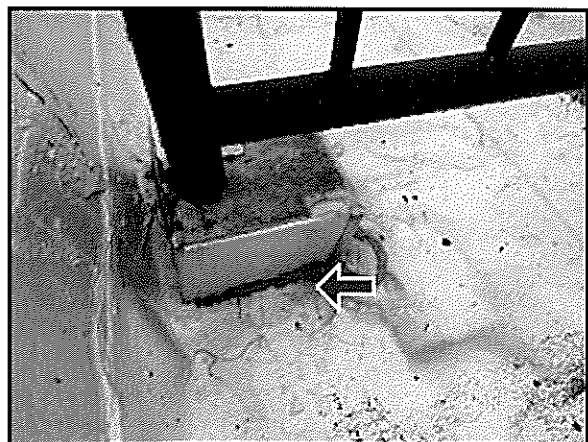
1.2 Picture 3



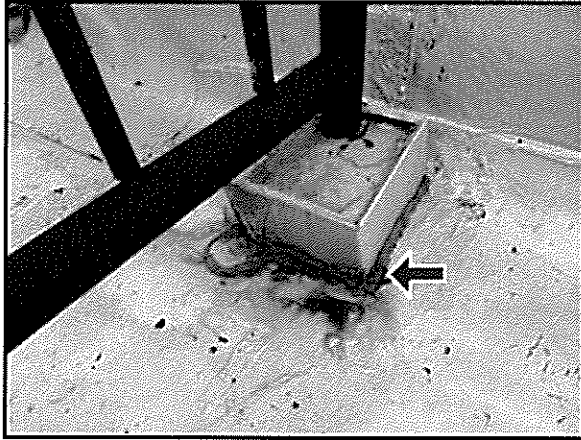
1.2 Picture 4



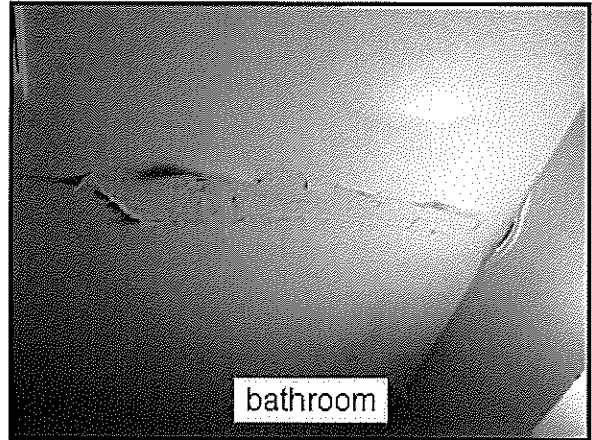
1.2 Picture 5



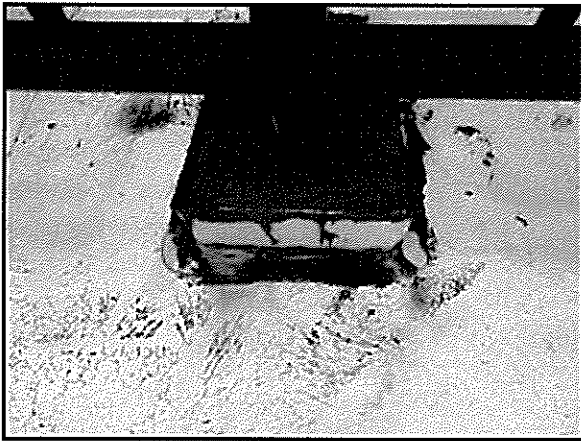
1.2 Picture 6



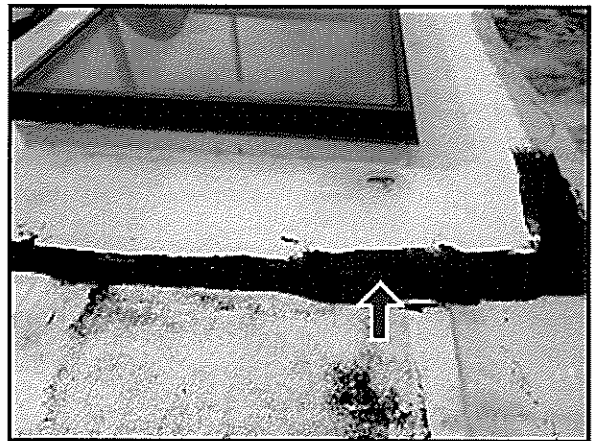
1.2 Picture 7



1.2 Picture 8



1.2 Picture 9

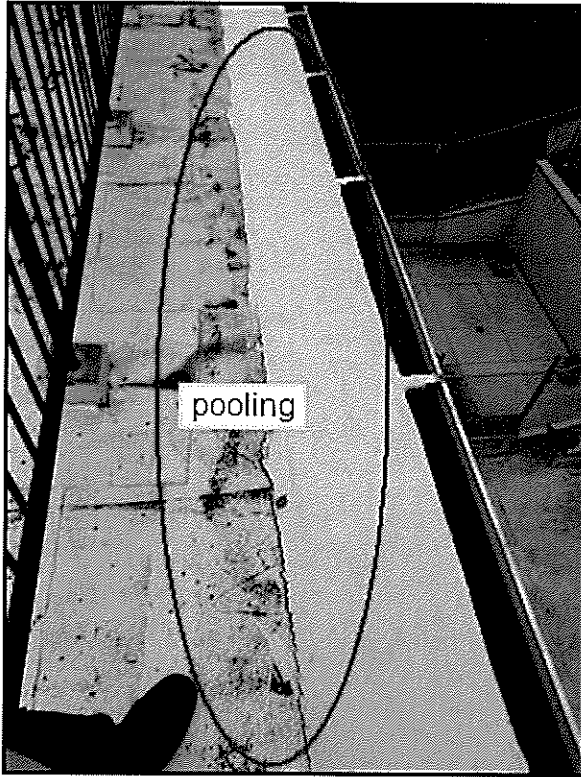


1.2 Picture 10

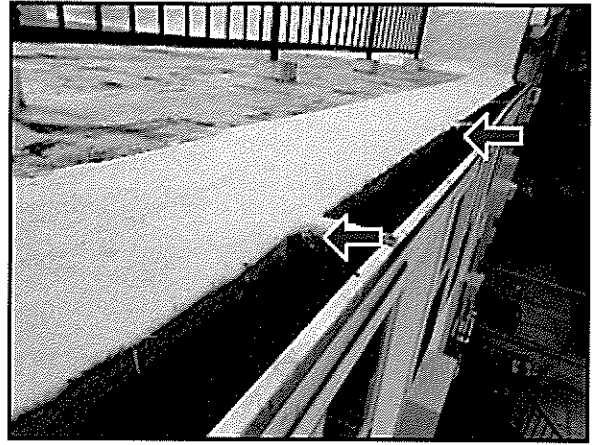
1.3 ROOF DRAINAGE SYSTEMS

Repair or Replace

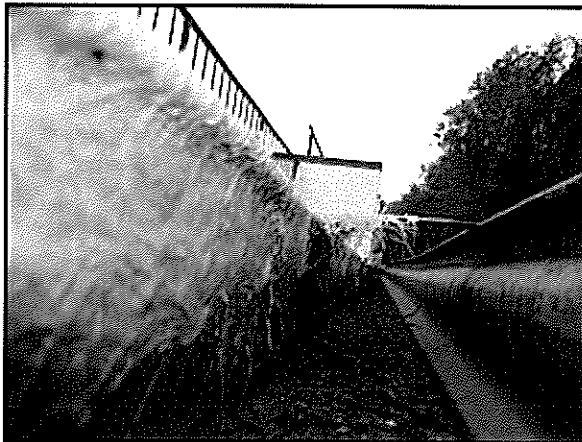
- ❏ The gutters are too close to the roof which will allow water or snow to back up under roof and damage wood and leak into apartments. There were some repairs visible however there were still openings where the gutters were attached. These gutters need to be re designed to function properly.



1.3 Picture 1



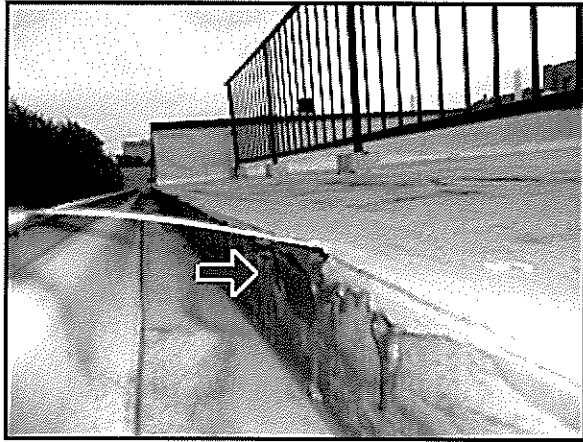
1.3 Picture 2



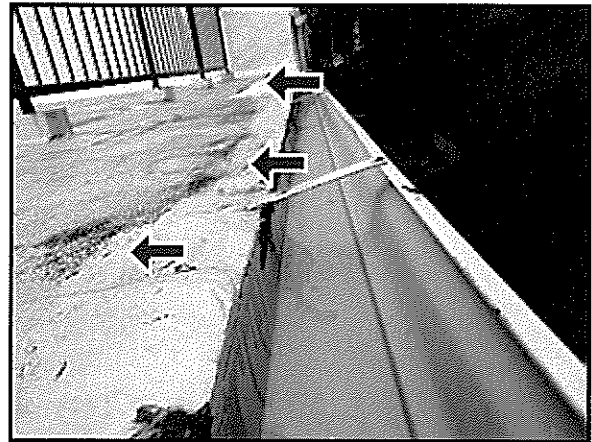
1.3 Picture 3



1.3 Picture 4



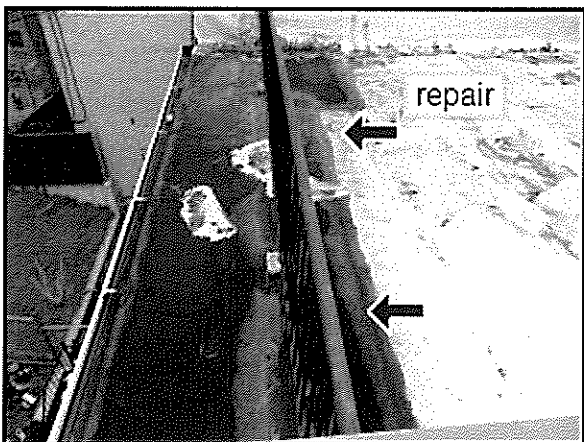
1.3 Picture 5



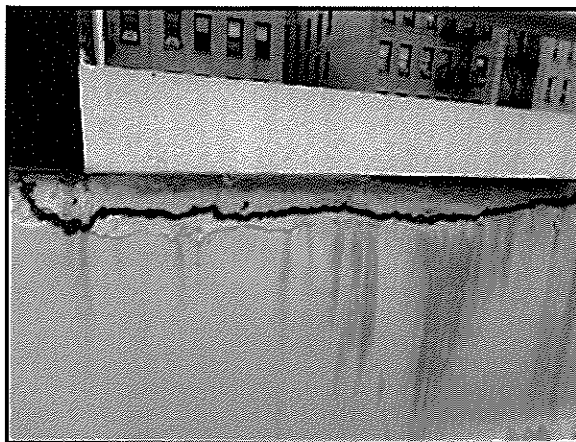
1.3 Picture 6

1.4 neighboring roof's
Repair or Replace

☒ All roofs appear to be designed the same and will need to be repaired. They all have pooling evidence near gutter and have loose wood under membrane.



1.4 Picture 1



1.4 Picture 2



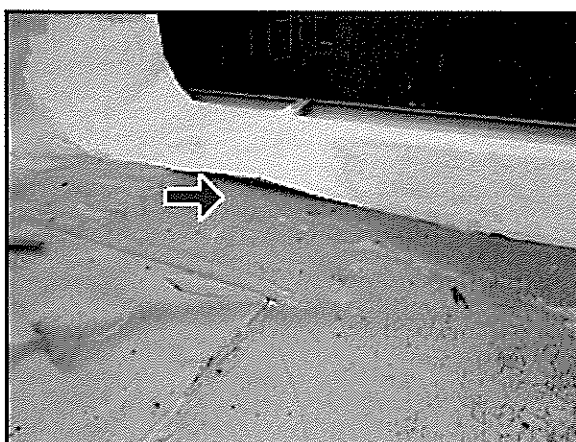
1.4 Picture 3



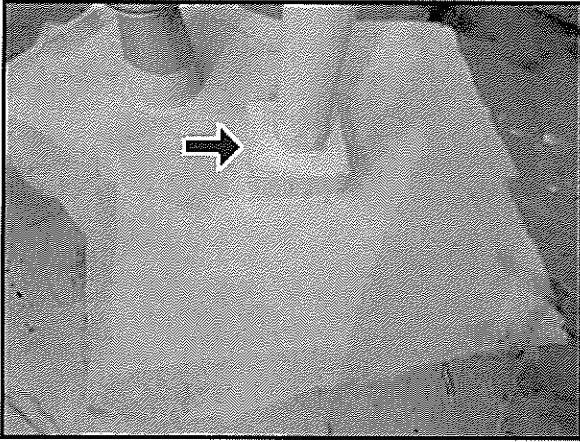
1.4 Picture 4



1.4 Picture 5



1.4 Picture 6



1.4 Picture 7



1.4 Picture 8

1.5 OTHER

Repair or Replace

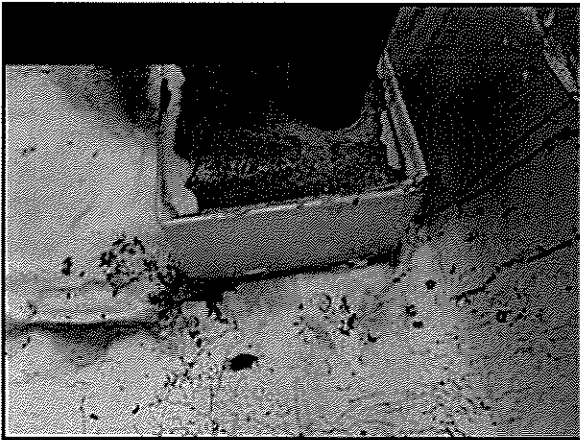
☒ These roofs have been repaired in many different ways and still appear to leak. Re designing the roof with a greater pitch and better drain system may be needed.



1.5 Picture 1



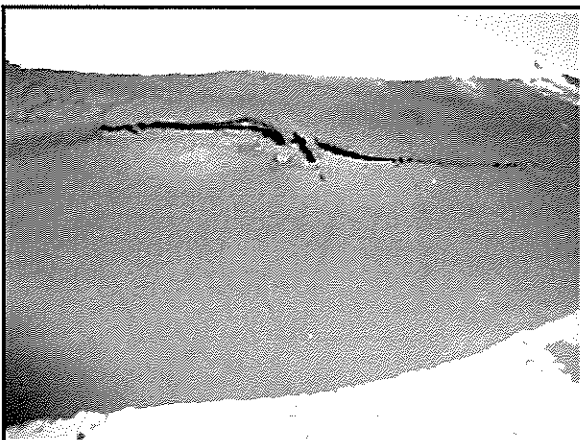
1.5 Picture 2



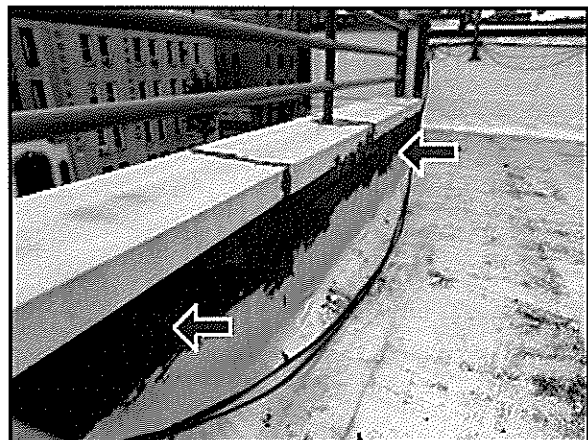
1.5 Picture 3



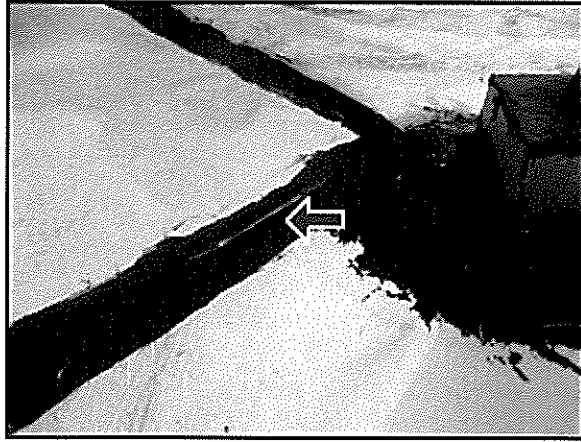
1.5 Picture 4



1.5 Picture 5



1.5 Picture 6



1.5 Picture 7

The roof of the home was inspected and reported on with the above information. While the inspector makes every effort to find all areas of concern, some areas can go unnoticed. Roof coverings and skylights can appear to be leak proof during inspection and weather conditions. Our inspection makes an attempt to find a leak but sometimes cannot. Please be aware that the inspector has your best interest in mind. Any repair items mentioned in this report should be considered before purchase. It is recommended that qualified contractors be used in your further inspection or repair issues as it relates to the comments in this inspection report.

Prepared Using HomeGauge <http://www.HomeGauge.com> : Licensed To Certified Home Inspections

1. Roofing

1.0 ROOF COVERINGS

Repair or Replace

- ☐ The roofing on this home appears to be about 5 to 10 years old. The pitch of the roof is barely visible and not existent on the back 20 feet. There is pooling occurring in this area on all of these roofs. There is a lip on the back edge preventing the water to run off correctly. There is also an opening in membrane on edge which will allow water to back up and enter the home.

1.1 FLASHINGS

Repair or Replace

- ☐ The metal coping needs to be sealed and the screws need to be tightened and sealed to prevent leaking.

1.2 SKYLIGHTS, CHIMNEYS AND ROOF PENETRATIONS

Repair or Replace

- ☐ There is visible evidence of water under membrane and wood lifting at seams on roof. The railings, skylights, and waste vent pipes also are leaking. There is evidence on the interior bathrooms of this area leaking. To fasten the loose decking and repair leaking may require removing the roofing in these areas.

1.3 ROOF DRAINAGE SYSTEMS

Repair or Replace

- ☐ The gutters are too close to the roof which will allow water or snow to back up under roof and damage wood and leak into apartments. There were some repairs visible however there were still openings where the gutters were attached. These gutters need to be re-designed to function properly.

1.4 neighboring roof's

Repair or Replace

- ☐ All roofs appear to be designed the same and will need to be repaired. They all have pooling evidence near gutter and have loose wood under membrane.

1.5 OTHER

Repair or Replace

- ☐ These roofs have been repaired in many different ways and still appear to leak. Re-designing the roof with a greater pitch and better drain system may be needed.

Home inspectors are not required to report on the following: Life expectancy of any component or system; The causes of the need for a repair; The methods, materials, and costs of corrections; The suitability of the property for any specialized use; Compliance or non-compliance with codes, ordinances, statutes, regulatory requirements or restrictions; The market value of the property or its marketability; The advisability or inadvisability of purchase of the property; Any component or system that was not observed; The presence or absence of pests such as wood damaging organisms, rodents, or insects; or Cosmetic items, underground items, or items not permanently installed. Home inspectors are not required to: Offer warranties or guarantees of any kind; Calculate the strength, adequacy, or efficiency of any system or component; Enter any area or perform any procedure that may damage the property or its components or be dangerous to the home inspector or other persons; Operate any system or component that is shut down or otherwise inoperable; Operate any system or component that does not respond to normal operating controls; Disturb insulation, move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility; Determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including but not limited to mold, toxins, carcinogens, noise, contaminants in the building or in soil, water, and air; Determine the effectiveness of any system installed to control or remove suspected hazardous substances; Predict future condition, including but not limited to failure of components; Since this report is provided for the specific benefit of the customer(s), secondary readers of this information should hire a licensed inspector to perform an inspection to meet their specific needs and to obtain current information concerning this property.

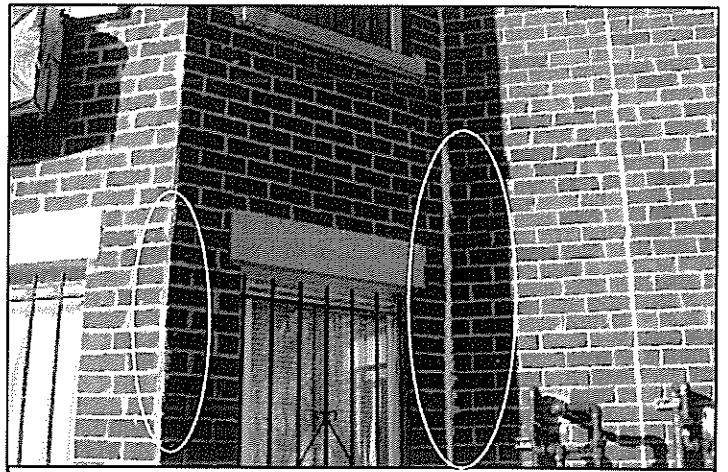
341 Clifton Place,
Brooklyn, NY 11216

Baseline photos – November 6, 2011
Outlining present condition of residence

This is a multi-family residence situated at the above address. Homeowner requested site visit to record problems and prepare report outlining observations on the day of the inspection.



Picture 1 – Large bulge in brick veneer above second story bump out.



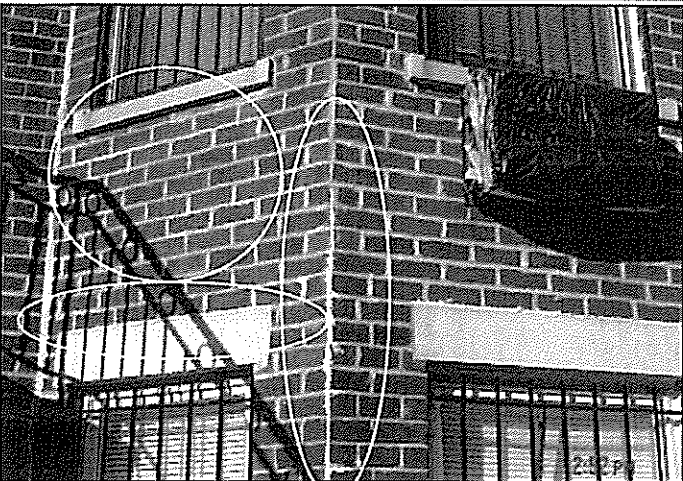
Picture 2 – Caulking applied along vertical mortar joint. This is typical of all first story brick miter joints.



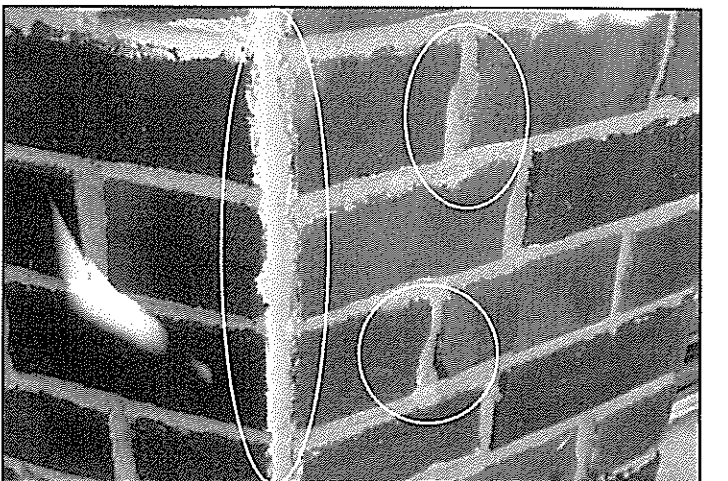
Picture 3 – Liberal use of caulking along cap for bump out. This area corresponds to interior damage and repairs.



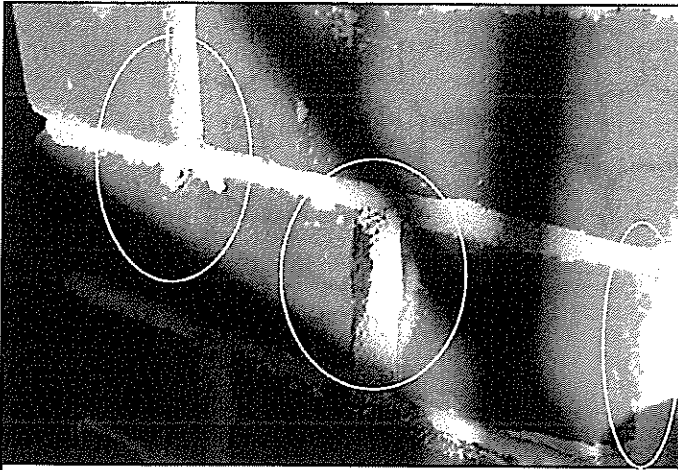
Picture 4 – Bulge in brick veneer extends the length of building exterior parallel to window lintel.



Picture 5 – Liberal use of caulking on vertical brick miter joint. No weep holes observed for lower level lintel. Re-pointing observed.



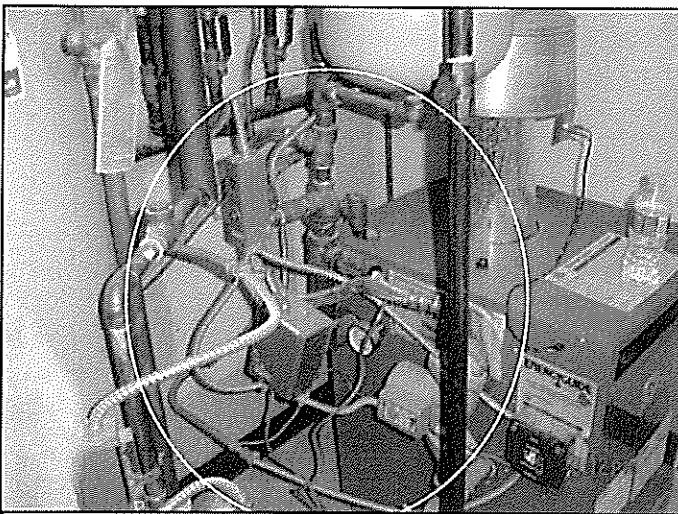
Picture 6 - Damage bricks observed. Back cut bricks used along main façade. Large open joints observed as a result.



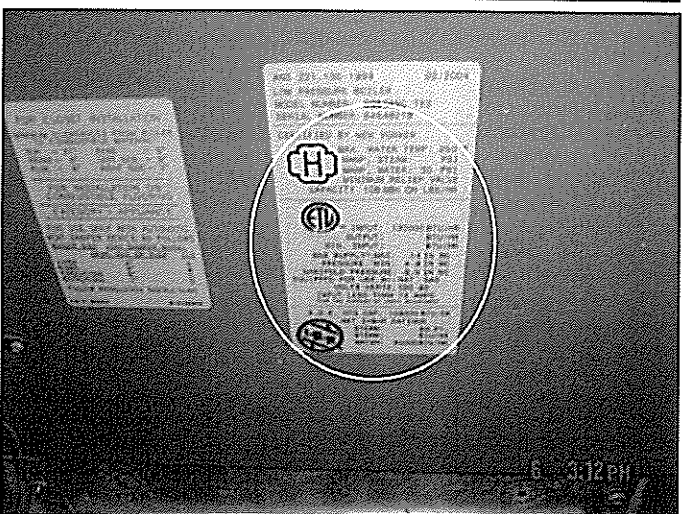
Picture 7 – Deep open mortar joints observed. Poorly applied mortar. Re-pointing observed.



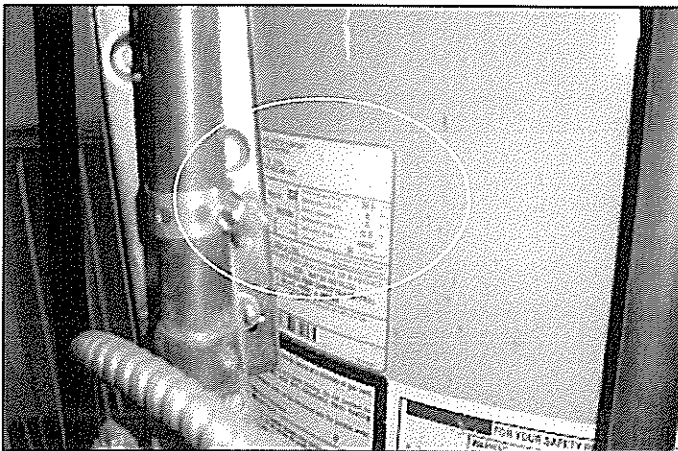
Picture 8 – No weep holes observed for proper drainage.



Picture 9 – Plumbing connections to central heating unit using braided connections. Poor installations practices for electric and plumbing connections.



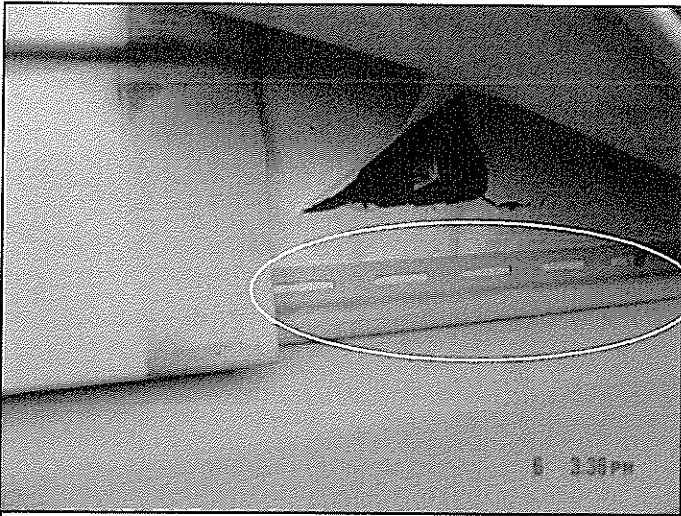
Picture 10 – Central heating unit. Building plans specify 150,000 Btu/hour input. Actual unit rated for 130,000 Btu/hour.



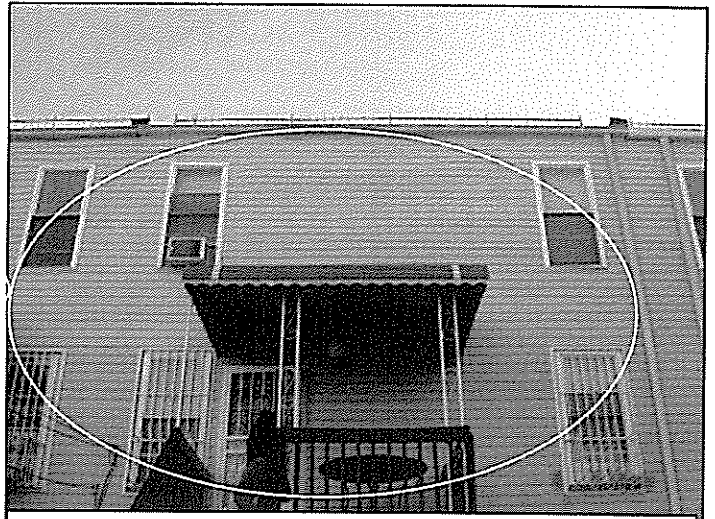
Picture 11 – Building plans specify 75 gallon capacity for hot water heater. Actual unit capacity rated for 50 gallons. Wood blocks used to support unit.



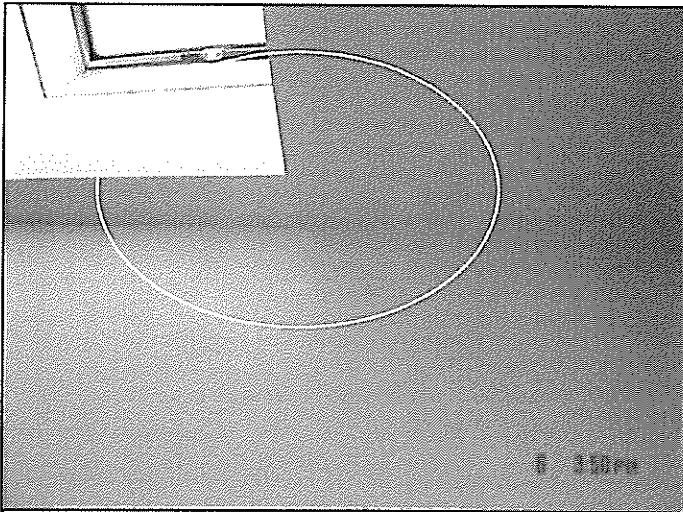
Picture 12 – Rear exterior siding improperly installed. Extensive bulging observed throughout exterior. No separation of siding between attached building.



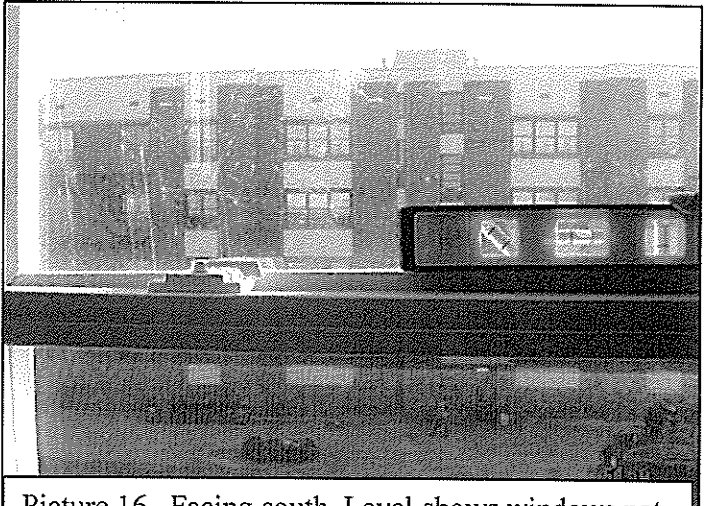
Picture 13 – Rear exterior fasteners are tight to siding. No room for expansion and contraction.



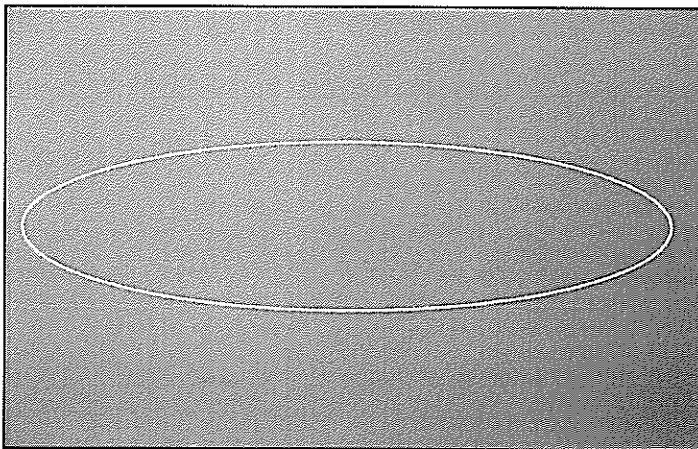
Picture 14 – Rear exterior has no separation between attached homes to permit individual repairs.



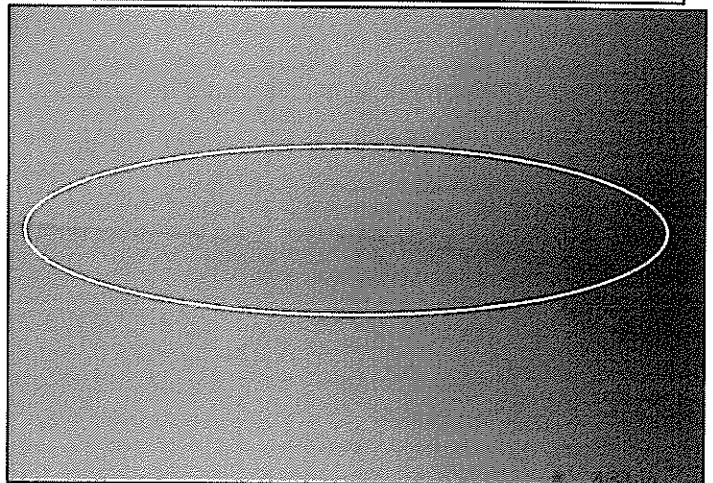
Picture 15 – Water damage observed at skylight opening. Several repairs to interior observed.



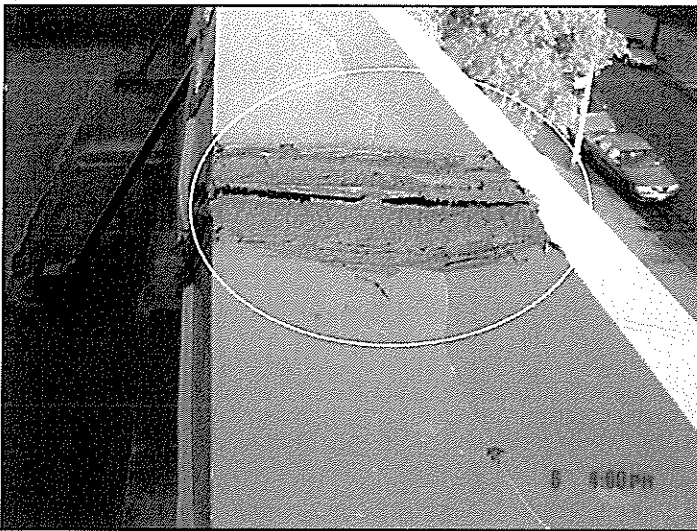
Picture 16– Facing south. Level shows windows not set properly in opening. Upper sash out of plumb. Typical of several windows at this residence.



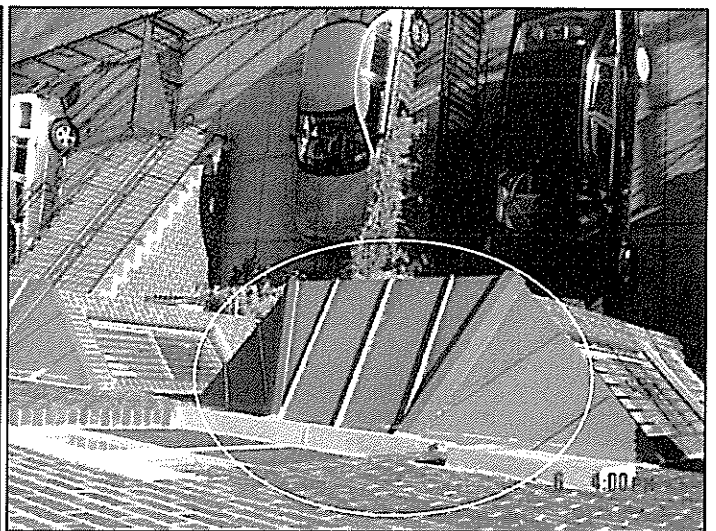
Picture 17– Living room ceiling on top level. Previous repair as a result of roofing related problems.



Picture 18 - Northwest corner of northeast bedroom on top level shows damage from settling.



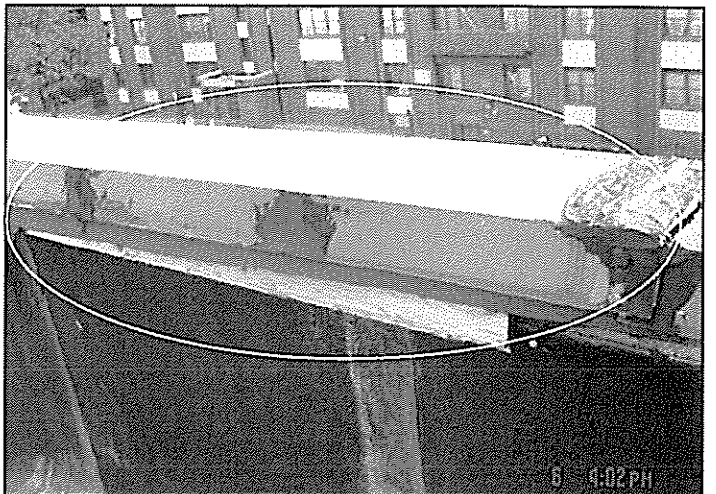
Picture 19- Facing east – large opening at aluminum cap joint for parapet.



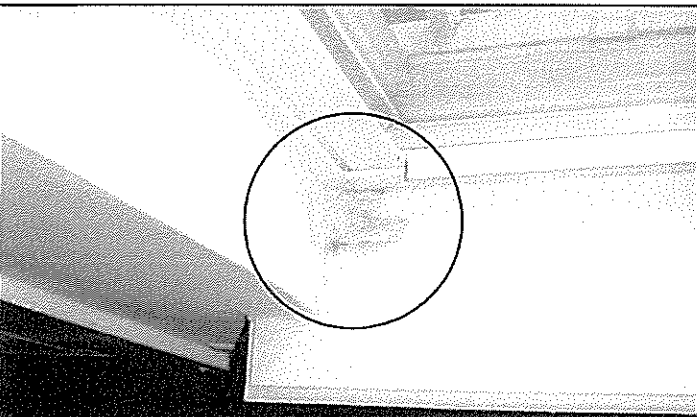
Picture 20- Looking down from roof. Heavy application of caulking on cap for bump out.



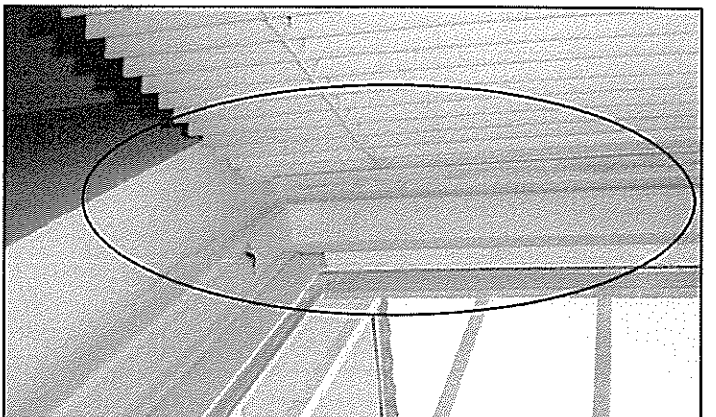
Picture 21- Facing east – damage along entire parapet cap.



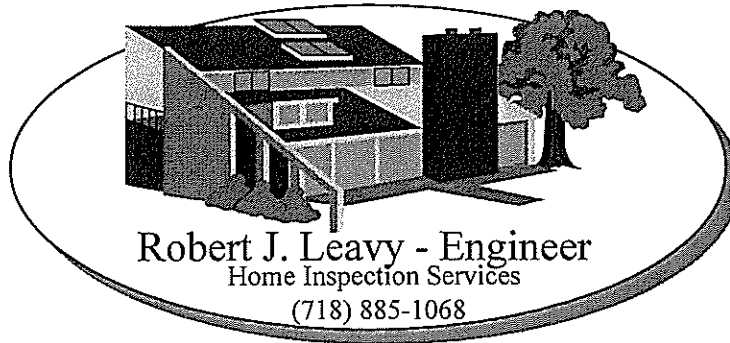
Picture 22- Facing south – small section of wood used as nailing surface to secure cap.



Picture 23- Facing north – water damage and staining in kitchen window of second floor.



Picture 24- Facing north – open seam along top rail of kitchen window on second floor. Improper installation suspect.



Client: Shanita Wells
Location: 341 Clifton Place, Brooklyn, NY 11216
Subject: Residential home inspection
Date of Service: November 6, 2011

This inspection covers only the areas of the home where the owner has experienced problems. This home was constructed several years ago. No Certificate of Occupancy appears under the address for the Department of Buildings. This is unusual considering the home is occupied. The attached report outlines the finding with photos taken on the day of the inspection. Additionally, a copy of the Department of building website listing is also attached. The findings are not listed in order of importance. Please read this report carefully.

Exterior:

The following items were observed:

1. The exterior brick work for the main façade has been improperly installed. Large bulges were observed above the second level lintel. It is possible that this damage to the exterior was caused by frost heave as a result of improper drainage. This condition is the cause of great concern since the building is fairly new and the amount of displacement is significant. A section of the façade must be removed to determine the cause of displacement. Once the cause has been determined, the corrective work can commence.

1a. The quality of the bricks and the method of installation are questionable. Heavy mortar application and brick joinery are less than acceptable. All areas where the mortar is overlapped or deeper than the maximum depth from the brick face must be reset. Attempts to re-point sections of the exterior were observed. The method of re-pointing is not acceptable.

1b. Mitered bricks are used on straight facades. Irregular shaped bricks were observed along the lower level. Only square faced bricks should be used in these areas. It appears that these bricks were available and therefore employed during the construction of this façade.

1c. The heavy use of caulking was observed along the vertical mitered joints along the main and second level. It appears that the caulking was employed to eliminate exterior leaks. The present owner stated that exterior leaks were experienced and the contractor made numerous repairs. The poor method of installing the brick veneer and the liberal use of caulking are strong indications that water infiltration problems can be expected in the future.

1d. The lack of weep holes was observed over several lintels on the main façade. The weep holes permit trapped moisture to escape from behind the brick veneer. The weep holes can be installed.

1e. The liberal use of caulking was observed throughout the aluminum cap for the bump out on the second level. The flashing for the cap does not appear to have been installed correctly. The present owner stated that the interior damage to the ceiling corresponded to this area.

2. The rear vinyl siding has not been installed correctly as evidenced by the large bulges and uneven surfaces throughout the entire rear facades of all the newly installed homes.

2a. The fasteners for the siding were installed without any ability for the siding to flex and move with temperature changes. The siding may have been installed during cold temperatures. Since the siding is fixed in place, any expansion results in large bulges throughout the rear façade.

2b. Further compounding the problem is the fact that there is no separation channel between the units. Separation channels allow each owner to be responsible for the repair and replacement of their exterior siding without interfering with the exterior of the adjacent unit. Without these separation channels, the bulging is even more pronounced. The siding must be removed and properly installed.

3. Several windows have not been installed correctly as evidenced by the inability to lock several units.

3a. The upper sashes does not remain in their upright position. Forcing the sashes apart does not always yield the desired results.

3b. The building plans provided show aluminum clad and vinyl clad units depending on schedule. All units appeared to be vinyl clad.

3c. The dining room window on the second level was observed to have water leaks on the sill and upper sash connection. Further investigation is required.

3d. Although problems with several units were observed. Any and all defects can be corrected by removing the affected sash and correcting the alignment problem.

Roofing System:

The following items were observed:

1. Damage to the aluminum cap for the parapet wall was observed. Open joints and damage was observed throughout the cap. Interior repairs to the ceiling corresponding to this area were observed.

1a. A wood strip was used as a nailing surface to repair the cap. This is unacceptable. The open areas must be properly sealed. The cap should be removed and properly installed to ensure weather tightness to the roofing system.

1b. Interior damage and repair was observed along the opening for the skylight. The present owner stated that the contractor was required to return and make the necessary repairs.

1c. Damage to the interior wall separating the bedrooms on the top level were observed. It is possible that the damage is not roof related but the more probable cause is settling.

Certificate of Occupancy:

1. The present owner stated that he has not yet obtained a Certificate of Occupancy from the Department of Buildings.

1a. A visit to the Department of Buildings website confirmed that a Certificate of Occupancy for this address is not available. No outstanding violations were observed. Further investigation is required.

Central Heating Unit and Distribution:

1. The building plans specify the make and model number for the central heating unit as a Weil McClain MEA#159-75-E, model EG-45. This model has an input rating of 150,000 Btu/hour and an IBR of 106,000 Btu/hour. The actual unit is a New York Boiler unit with an input rating of 130,000 Btu/hour and an IBR of 94,000 Btu/hour.

1a. These are not equivalent units in size and output. The unit presently in operation is significantly smaller than the unit specified.

1b. Zone valves were observed for the central heating unit. Therefore, there is some control over the distribution throughout this building.

1c. The net output of the actual unit is rated for 94,000 Btu/hour. Considering the three floors, total surface area and the configuration of the distribution, it appears that the system is balanced.

1d. The plumbing and wiring in the immediate vicinity of the central heating unit has not been installed in a professional manner as evidenced by the sloppy installation technique.

Hot Water Heater:

1. The hot water heater specified in the building plans call for a 75 gallon capacity unit. The actual unit is rated for only 50 gallons.

2. At the time of the inspection, the hot water heater constantly cycled indicating that it was undersized for the level of demand.

3. Wood blocks were observed. These block should be replaced with masonry units and secured to the basement floor.

NYC HPD: Building Tomorrow's Slums Today

A non-comprehensive collection of data, news reports and evidence regarding the corruption, incompetence and malfeasance of New York City's Department of Housing Preservation and Development

**Prepared for the
The New York City Council**

Department of Housing Preservation and Development

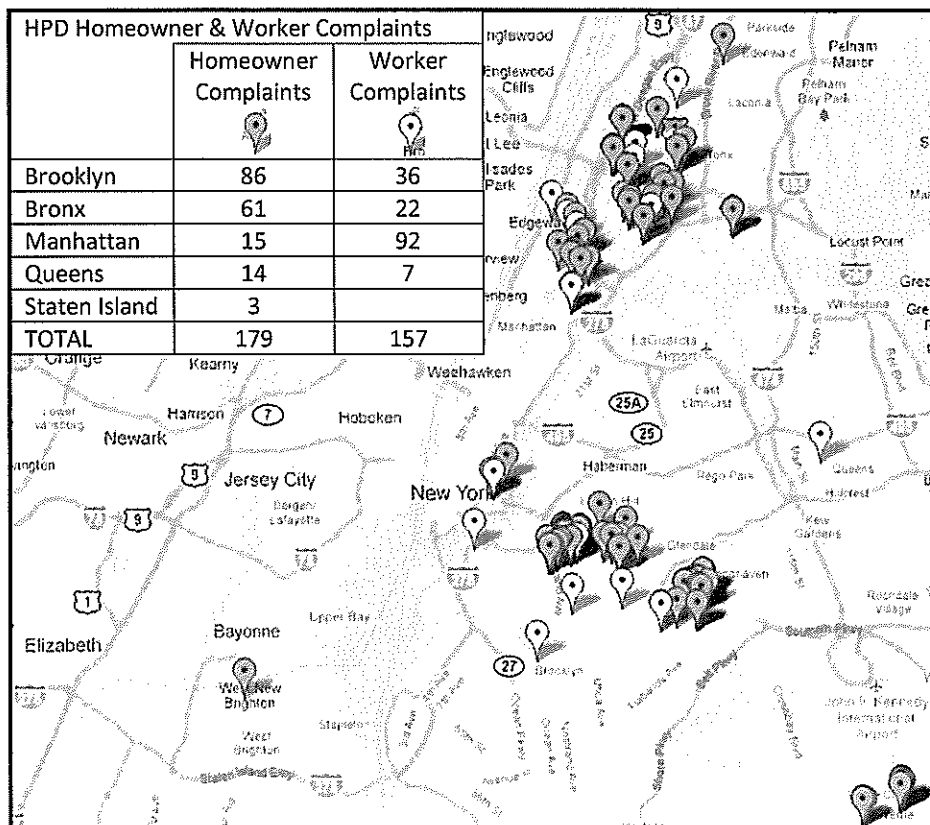
Since reopening our investigation into construction work performed on behalf of the Department of Housing Preservation and Development (HPD), we have found that exploitation of HPD workers and customers we began to document in 2006 persists today. Additionally, an explosion of federal and local investigations further exposed a web of corruption and mismanagement within HPD.

We believe the documentation provided in this report shows that the affordable housing promulgated by HPD is not affordable because:

1. Homeowners are imprisoned in dangerous and inefficient housing that requires major investments to repair within the first few years of the house's life because of shoddy construction and the use of inferior materials.
2. Rather than paying the legally required prevailing wage, contractors and subcontractors knowingly underpay construction workers, which ultimately costs New York City taxpayers \$85 to \$126 million in unpaid payroll taxes, unemployment taxes, and increased social service costs.
3. The purposeful opaqueness of the HPD procurement and funding process creates space for corruption and mismanagement that, in some cases, resulted in bribery, fraud and violence.

Current Findings

The victims of HPD's corruption and mismanagement are both the first time homeowners that unknowingly purchase poor quality houses from a supposedly trustworthy City agency as well as the underpaid workforce that builds the housing. Over the last year we have spoken with hundreds of these homeowners, tenants, and workers in all five boroughs.



Homeowners. Over 150 homeowners and tenants of new HPD housing, all living with egregious structural defects that pose both health and safety concerns, have been identified by Justice for Homeowners. Their housing problems are directly caused by shoddy construction resulting from the use of unskilled labor and inferior materials. Requests made to HPD and developers for help with repairs are largely unanswered or “resolved” by temporarily aesthetic fixes without addressing the root cause.

Workers. In the last year we have spoken to nearly 400 workers drastically underpaid on prevailing wage HPD jobs. These workers represent the employees of HPD’s main stock of contractors and subcontractors. About 150 workers filed complaints with the US DOL. In one case, complaints from workers on the ARRA-funded Metro North project in Harlem resulted in a federal DOL investigation that unveiled 290 employees of Lettire Construction subcontractors were due a total of \$1.4 million in backwages. The US DOL is currently seeking to debar from federally funded work Lettire Construction, its president Nicholas Lettire, and several project subcontractors.

Governmental Charges and Regulatory Agency Findings

- HPD Assistant Commissioner Wendell Walters was indicted by the federal government in October 2011 for racketeering, bribery, corruption and fraud for allegedly extorting bribes and kickbacks from developers and contractors seeking access to affordable housing programs.
- Two HPD developers pled guilty to racketeering conspiracy, bribery, wire fraud conspiracy and money laundering in October 2011 for charges related to securing HPD development work.
- NYS Assemblyman William Boyland was charged in November 2011 with soliciting money from a traveling carnival promoter to secure a lease on HPD properties. In an FBI recorded conversation, Boyland stated that he had HPD “locked up.” Later saying, “we got HPD... we’re there.”
- NYC Comptroller John Liu released the result of an audit of HPD’s Article 8A Loan account that found since 2007 unused Article 8A funds and the interests from different loan programs were deposited into the account. The balance swelled to \$17 million when the account was originally designed to have a zero balance and used only as a conduit for the City to distribute Article 8A Loan payouts, which remain in the City treasury before use. The Comptroller asserts that, “HPD has built up a huge reserve which may not be subject to the City’s budget process.”
- NYC Comptroller John Liu found HPD kept \$9.8 million in unused funds from expired contracts earmarked for capital expenditures under HPD’s Relocation Shelter account which should have been returned to the City treasury. The audit released in November 2011 also showed that HPD inappropriately used a portion of the funds to supplement its operating budget to evade the budgetary process.
- In 2010, The New York State Misclassification Task Force released the finding from nine affordable housing project sweeps found 3,855 misclassified workers, either working off the books or wrongly considered independent contractors. The audit shows 34 different construction companies with misclassified workers, which cumulatively reflect nearly \$1.8 million due in unemployment insurance and a quarter of a million dollars in assessed UI fraud penalties.

HOMEOWNER RIGHTS & QUALITY CONSTRUCTION PROBLEMS

Homeowners and tenants of brand new HPD housing live with egregious housing quality issues that pose both health and safety concerns. These problems are directly caused by shoddy construction resulting from the use of unskilled labor and inferior materials. Homeowners often invest their life's savings into purchasing a home in one of HPD's affordable housing programs. Many of these programs lock homeowners into the purchase for up to thirty years, forcing them to live in dangerous conditions or return a housing subsidy they cannot afford to repay. Most of these buildings are in high poverty neighborhoods with elevated rates of asthma, a problem further exasperated by the mold that thrives in leaky HPD buildings.

In the following pages we provide evidence of newly constructed and renovated HPD buildings with:

1. Major structural defects
2. Sewerage backups
3. Water leaks
4. Mold
5. Faulty equipment and systems

We also believe that the shoddy construction and materials contribute to vacancy in the HPD units. Our observation and research show that many of the buildings and units either lack certificates of occupancy or cannot retain rental tenants because of quality housing issues. Vacancy contributes to the neighborhood blight that affordable housing development is in part meant to address, as well as creating safety problems and other nuisances.

Additionally, we are including the results of home inspections completed by a licensed engineer. These reports directly connect the shoddy construction of the homes to the current problems faced by occupants. Flaws documented by the engineer include a dangerous and bulking brick façade caused by deficient masonry work and a builder that installed the wrong boiler. Also included is the cost estimate to correct plumbing on an HPD two-family home in Brooklyn. The sewerage piping was incorrectly graded causing raw sewerage backup. Without including labor cost, the rehabilitation of the plumbing system costs \$35,000.

HPD homeowner testimonials detailing their experiences with major problems with their homes and HPD's lack of response are also included in this section.

Bed Stuy homeowners charge city and developer tried to jack up price, then moved them into shoddy homes

Dream homes turned into nightmare amid delays and requests for more money

BY BRIAN KATES & ERIN DURKIN
NEW YORK DAILY NEWS
Sunday, December 18 2011, 6:00 AM

Bedford Stuyvesant homeowners say a developer and a since-indicted city official tried to hit them up for extra cash for their city-subsidized homes - and then left them dealing with shoddy construction on the buildings.

The six homeowners won an affordable housing lottery for homes along Lexington Ave. and made down payments in 2005 - but charge their home ownership dream turned into a nightmare amid delays, requests for more money, and problems from plumbing backups to faulty heating.

Developer Delight Construction and the Department of Housing Preservation and Development say the problems are minor; that the developer has continued to make fixes even after the homes' warranties expired, and the request for more money was an appropriate response to cost overruns.

But the homeowners are seething. They said that after they were delayed from moving into their homes for two years due to trouble cleaning up contamination, HPD official Wendell Walters told them to fork over about \$10,000 more to Delight for the cleanup, which the homeowners refused.

"Either we paid the money or we could walk away from the contract," said Onika McLean, 39. "We knew we were being yanked around...We had a contract in black and white."

Walters was indicted earlier this year for pocketing bribes from other developers looking for affordable housing contracts.

His lawyer, Howard Leader, said Delight was threatening to pull out of the deal without a higher payout. "It is my understanding (Delight) was refusing to sell the houses without the additional money," he said. "What Wendell was trying to do was save the deal."

Delight denied that.

"The fictitious and outrageous allegation regarding an alleged threat to pull the project in lieu of additional compensation by the prospective buyers is 100 percent false," said Delight spokeswoman Carolyn Daly. HPD spokesman Eric Bederman said: "It is our understanding that given the delays in construction due to necessary site remediation and the subsequent additional costs incurred by the developer, the homeowners were asked if they would be receptive to a possible increase. They declined and the issue was not revisited, and the prices were never increased."



Anita Clark at her home in Clinton Hill she purchased through an HPD lottery. She has had many problems with the house from the moment she moved in three years ago.

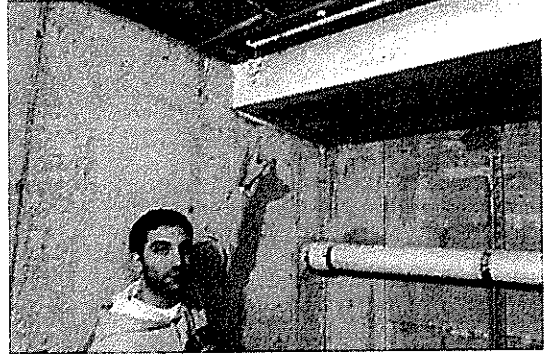
Developer Transcorp botched Ocean Hill houses: Homeowners

By ERIN DURKIN

Sunday, January 15, 2012

A developer with a long history of construction and safety lapses tapped by the city to build dozens of new homes in Ocean Hill stuck buyers with problem-plagued, leaking buildings, homeowners say.

First time homebuyers sunk their savings into the 42 homes at the Ocean Hill South development built by Transcorp Construction for a city Department of Housing Preservation and Development program - only to find water leaks pouring through windows, walls, and basements and leading to mold, cracks in walls, no insulation, and electric outlets and plumbing not working.



Ocean Hill homeowner Scott Levin shows leaks in his basement home that was part of shoddy work by shady developer hired by the city.

"It took away the happiness and joy of being a first time homewoner," said Scott Levin, 38. "It was almost like a recipe for disaster, a recipe for failure."

City officials acknowledged the problems last March and told homeowners they would clean up the developer's mess - but the repairs haven't happened.

Transcorp had a checkered history stretching back long before the homeowners moved in two years ago. One city-subsidized Harlem building they worked on collapsed in 2006, killing one worker and injuring two others.

An HPD spokesman told the Daily News after the collapse that Transcorp's work was so riddled with problems the company had already been barred in 2006 from new contracts with the city.

But the contract for Ocean Hill South dates to 2004. Residents, who paid about \$412,000 for the three-family houses, said they trusted a city-backed program would deliver quality homes.

"With a brand new home, you don't expect to have all these problems," said Corey Patrick, 42. "It was backed by the city, so I thought this was great...But they dealt with this shoddy developer, and now we're all getting screwed."

At least 35 of the homes have documented problems, records show.

"Every time it rains, water comes into the houses. Our basements flood. No insulation in the walls. The wind is just blowing through the house. Bad plumbing. And they don't come fix nothing," said Calype Bryant, 37.

Damon Chance, 39, hired his own contractor to fix leaks, though he's still dealing with buckling floors and lack of insulation. He sued Transcorp and won \$8900 - but the developer has refused to pay, claiming the money should come from a city repair fund they contributed to.

STRUCTURAL



Improper drainage and sidewalk pitching at home entrances in this Staten Island development result in chronic flooding of entire development. The above is a common scene. Homes permanently require sandbags at front doors.

STRUCTURAL

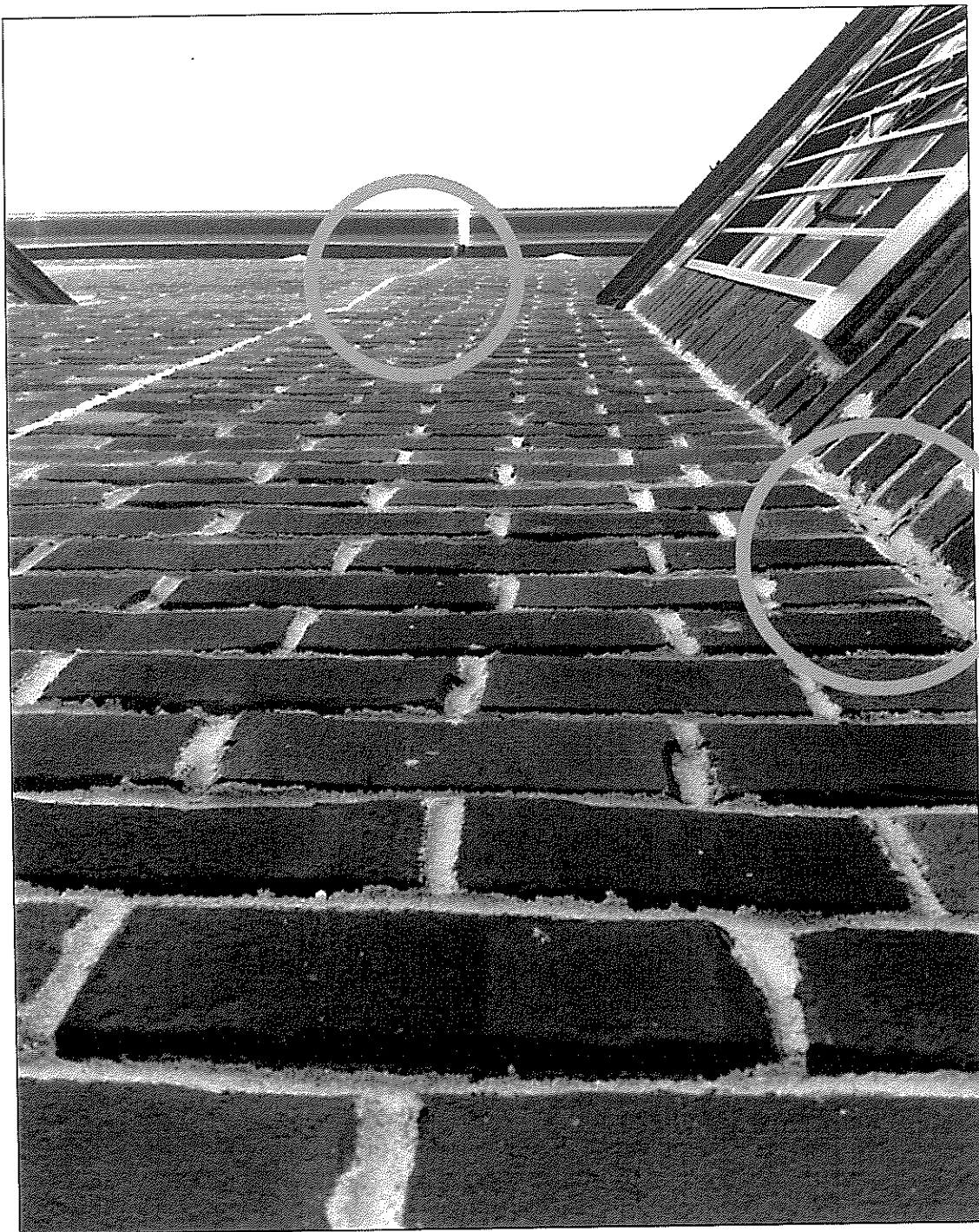


This house is sinking. The proper foundation supports were never used on this Rockaway house. When the homeowner walks across her living room, the floor bounces. Front yards in the development are now riddled with sinkholes.

Not shown in this picture are the doorframes that were simply wedged into the house, with no actual screws or nails holding securing them to the building. The buildings were designed for hot water baseboard heating, but instead faulty forced air systems were installed.

The developer insufficiently insulated and windows were improperly installed. This development is, situated between the ocean and the bay, is susceptible to high winds.

STRUCTURAL



Unskilled masonry work lead to a buckling façade and chronic indoor leaks. Improper repair of brick using caulking has only created further structural damage. Within the first five years of construction the house has already required repointing.

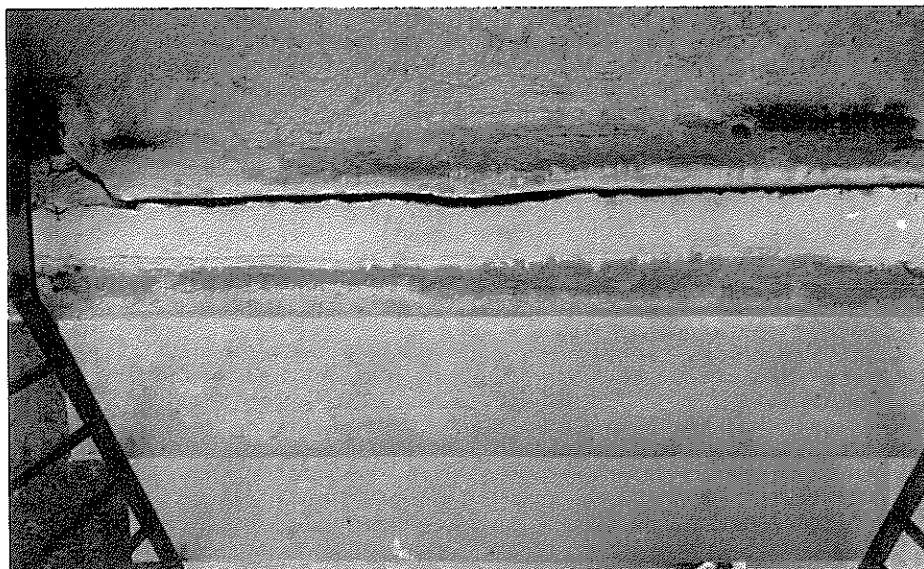
STRUCTURAL



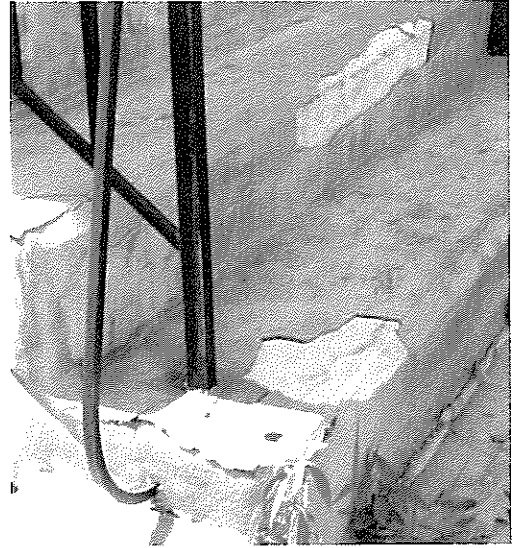
The sinking foundation at this Brooklyn home is causing chronic flooding into the basement. The water seeps into the crack between the home and the improperly sealed foundation and gushes into the basement. Structural integrity of the foundation is decaying. Instead of finding pleasure in her first home, the homeowner faces constant anxiety and never knows what she will come home to.

STRUCTURAL

This crack developed in the first six months of the building's life. The developer "fixed" the crack once. The repair did not take. According to the developer the now three year old building is past its warrantee. This indicative of an ongoing pattern with HPD developers: patch work repairs until the building warrantee expires.

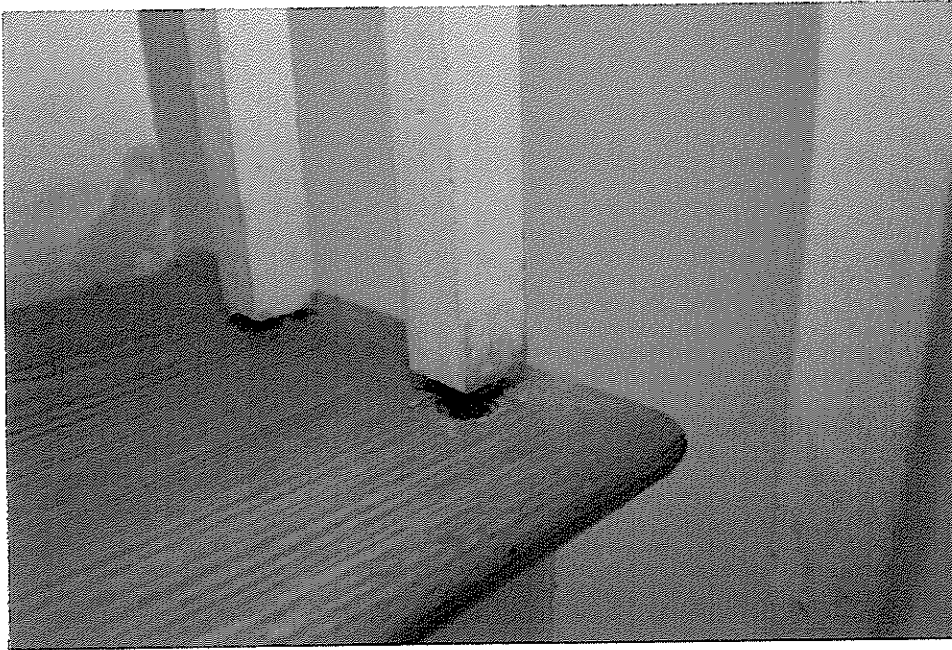


STRUCTURAL



After just two years every single staircase in this Brooklyn development is crumbling under homeowners feet. Three separate staircases on three separate buildings are pictured above.

STRUCTURAL



Railings on this indoor stairwell were never properly secured. It is both a falling hazard and unsafe for children.



This Bronx stoop, built by a NYSAFAH member, is a blight on the urban renewal touted by both NYSAFAH and HPD missions.

SEWERAGE

Many residents complain of sewerage backups in their homes. Below is documentation of one such incident.

From: [REDACTED]
Date: Sun, Dec 4, 2011 at 9:13 PM
Subject: Re: HPD Building Issues
To: Melissa Shetler

Hello Melissa,

This is [REDACTED] from 738 E. 5th St., NY, NY 10009.

Please if you could come to my apt right now or tomorrow, Dec.5th, as early as possible, there is a horrible dire condition in the bathroom and the emergency exit of the building (the emergency exit is next to my door), is full of filthy-nasty water that very soon it is going to get in my apt. Remember when I told you that this situation always happens every six or eight weekends? Yes, only happens on weekends, and if it happens when the super is not around like today (he only works Monday to Friday 9:AM to 5:PM), is a disaster. Please come tomorrow if you can so you could see what I am going through every time this happens.

Thanks and have a good night.

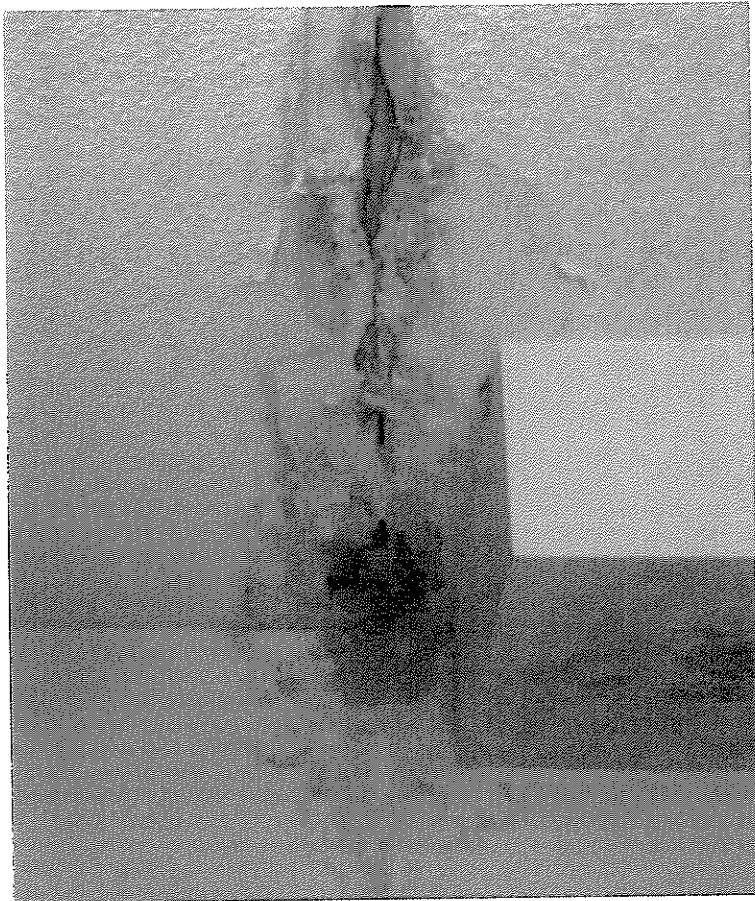


LEAKS

Water leaks cause property damage to possessions and contribute to long term structural damage of buildings. Homeowners' enjoyment of their new property is diminished by serious, ongoing anxiety over future leakage. The following pictures are a small sampling of leaks we documented.



LEAKS



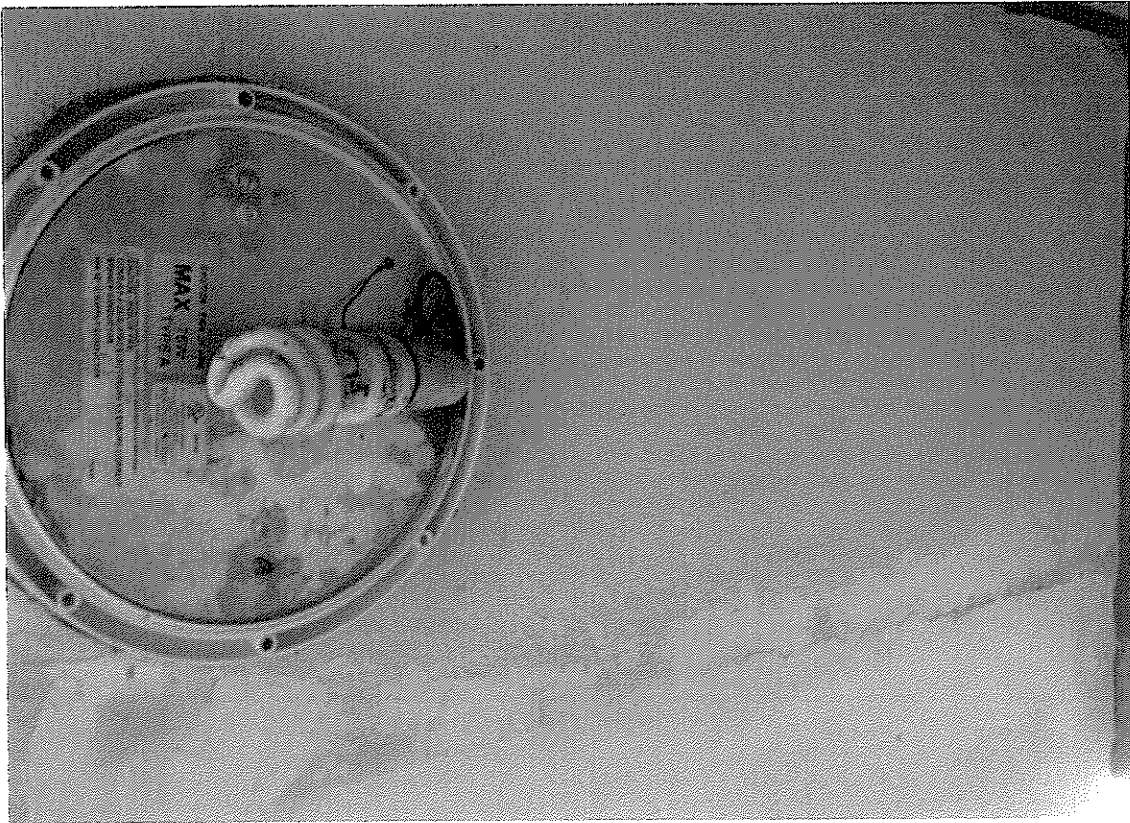
The leaks in this house developed within a year of the buildings completions and have been a continuous problem.

The developer has performed a fix several times. On each occasion plaster was applied to the leaks. Each time the plaster fix quickly became wet and peeled from the ceiling.



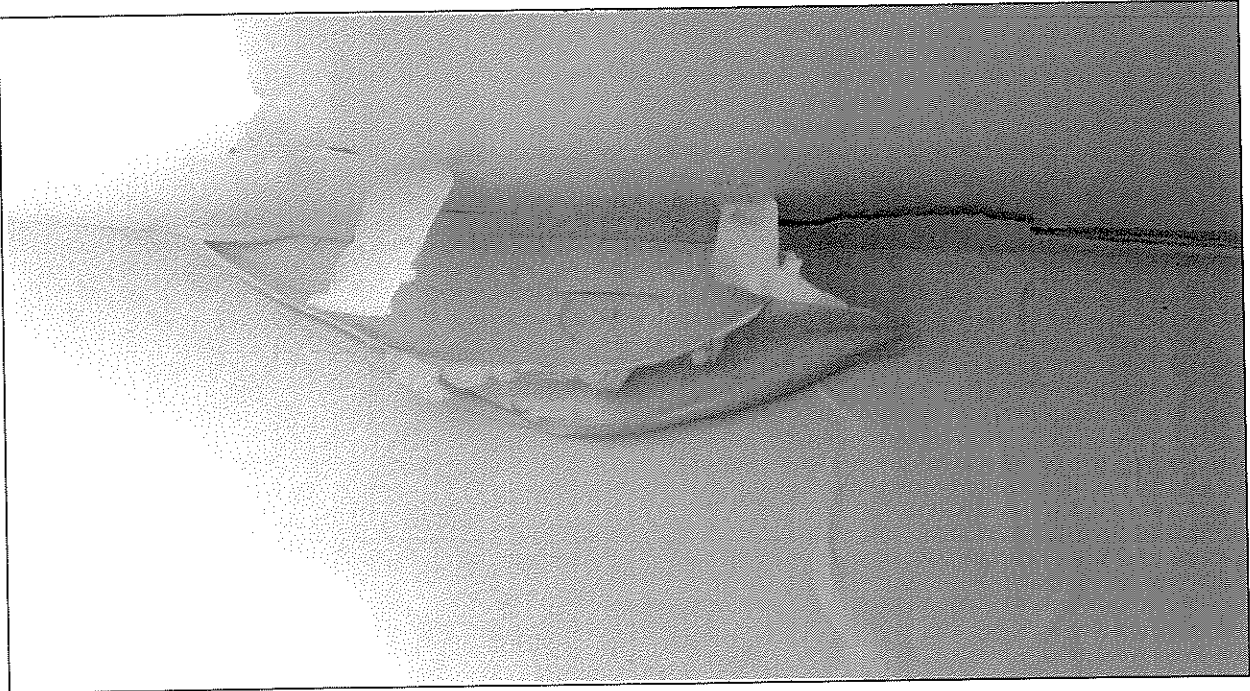
The building is now five years old; the leaks four and half.

LEAKS



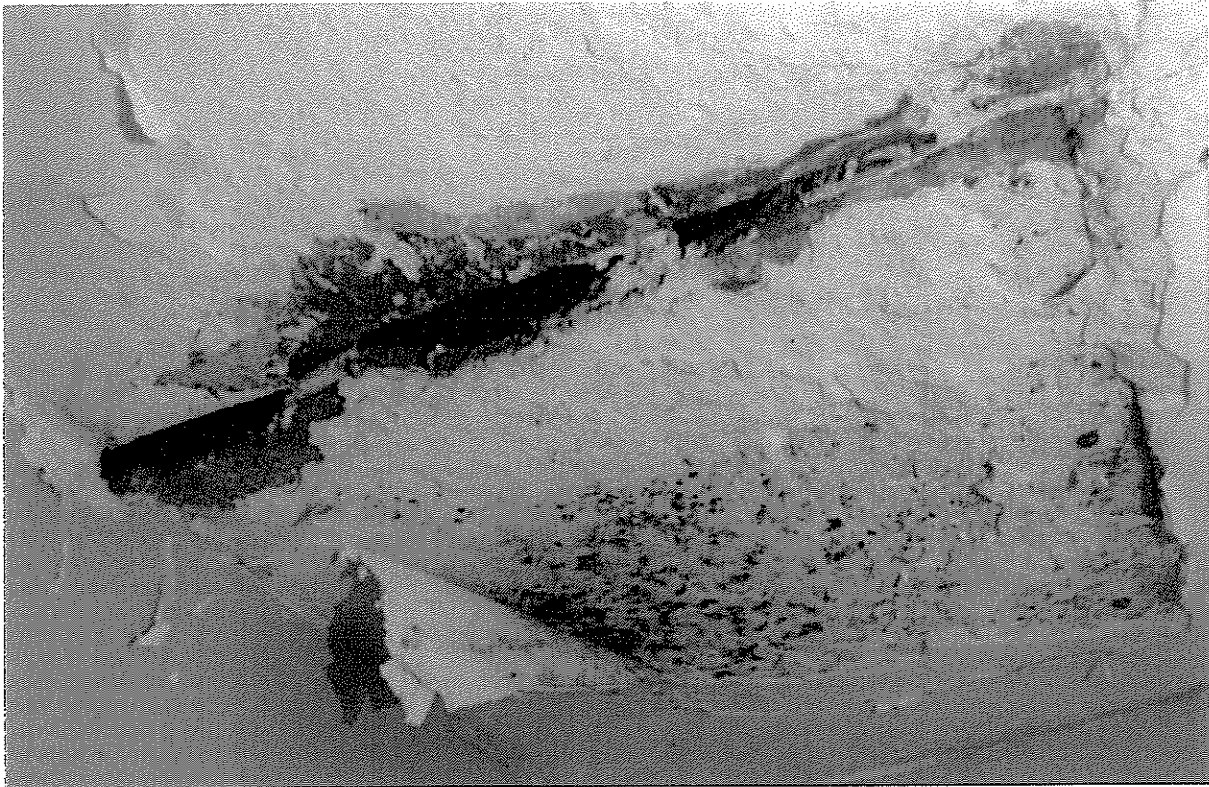
(Water leakage into electrical equipment poses a serious fire hazard.

LEAKS



Water leaks in common hallways

LEAKS



Leaking ceiling

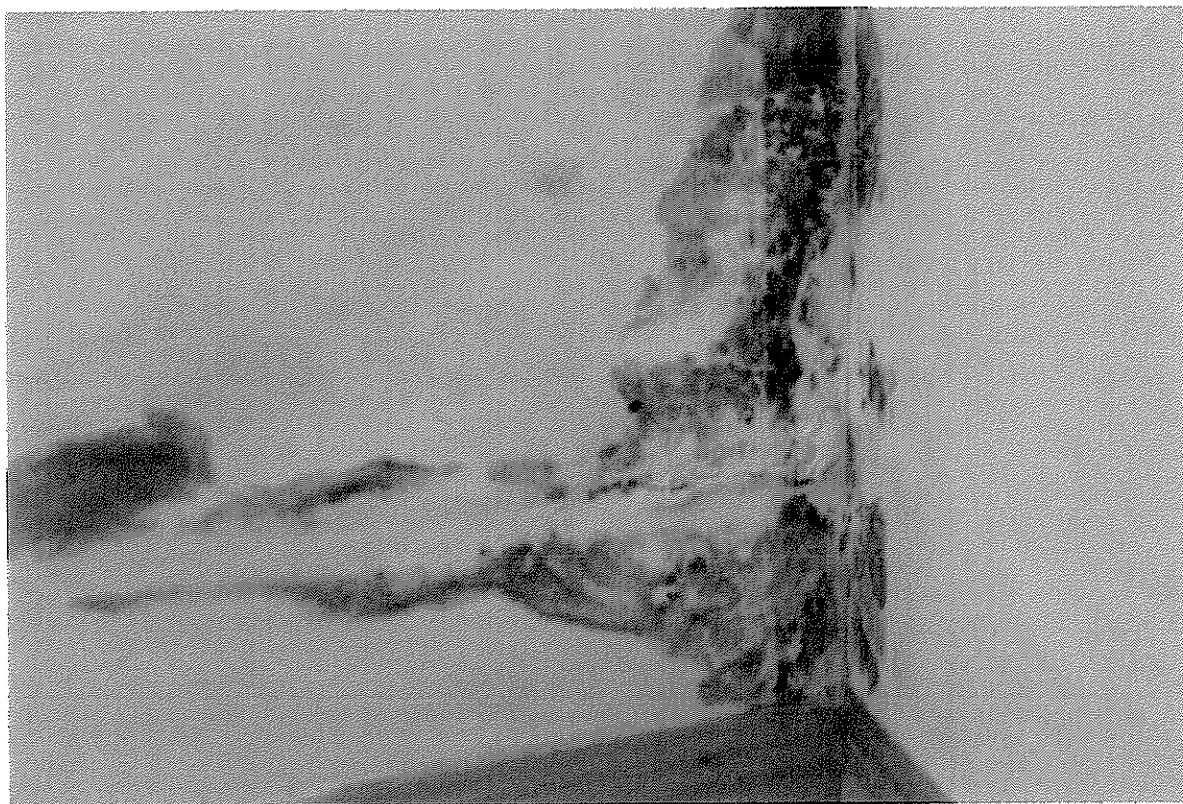


Water damage from untreated leak in hallway

MOLD

According to the EPA, “There is no practical way to eliminate all mold and mold spores in the indoor environment. The way to control indoor mold growth is to control moisture.” As documented, HPD buildings leak. In addition to the property damage leaks cause, it also contributes to the grown of mold.

According to a 1999 Mayo Clinic report, mold is linked to a 300 percent increase in asthma. Most HPD housing is built in low-income areas, already suffering from elevated rates of asthma. Additionally people sensitive to mold are vulnerable to a variety of ailments, ranging from headaches to mold infections in the lung.

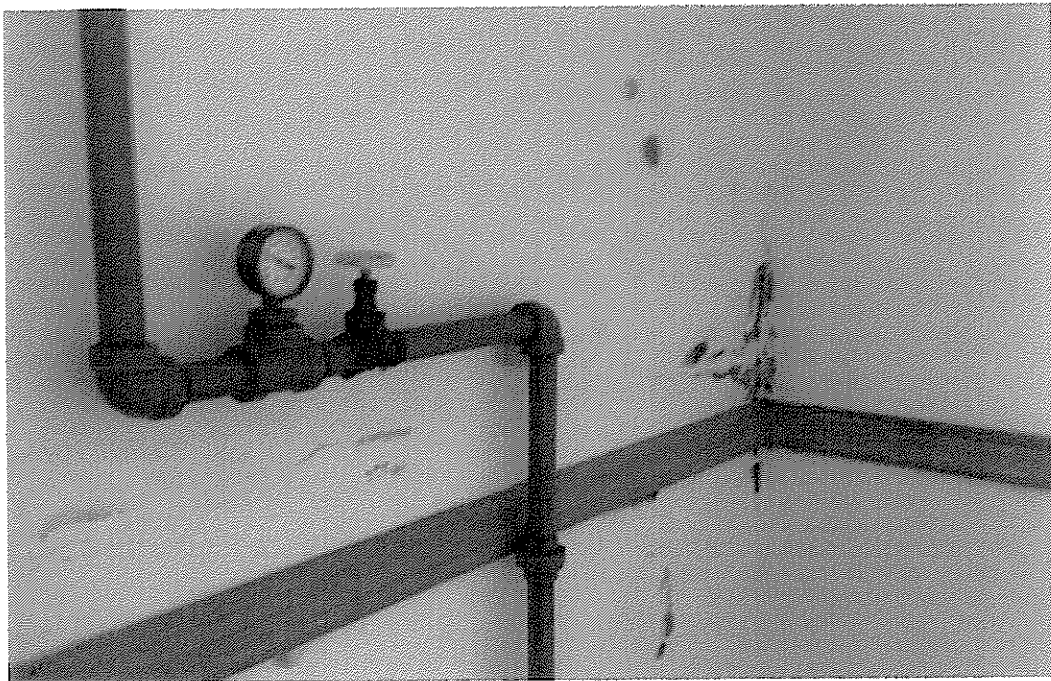


The above mold grew in a child's bedroom.

MOLD

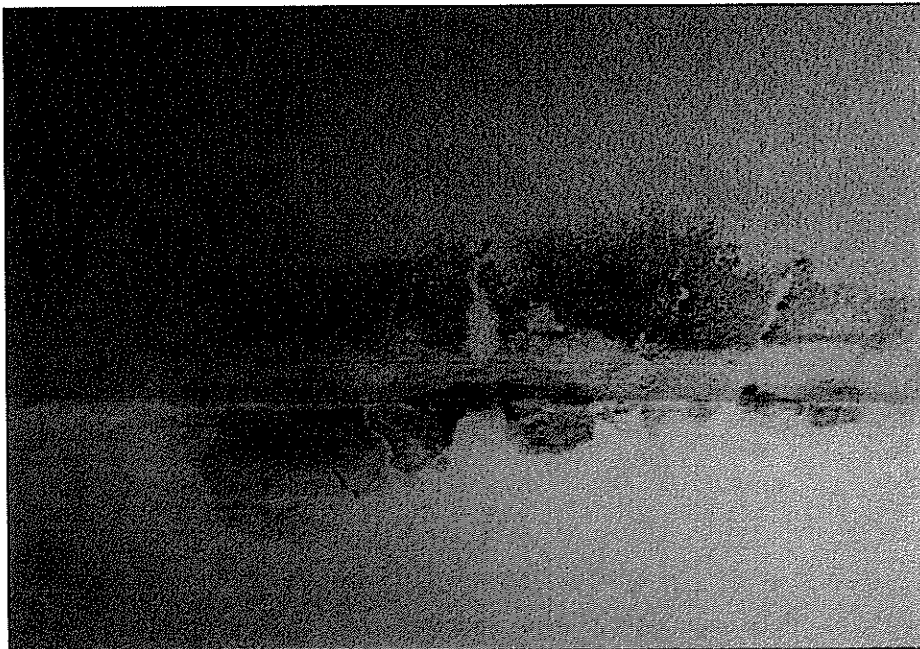
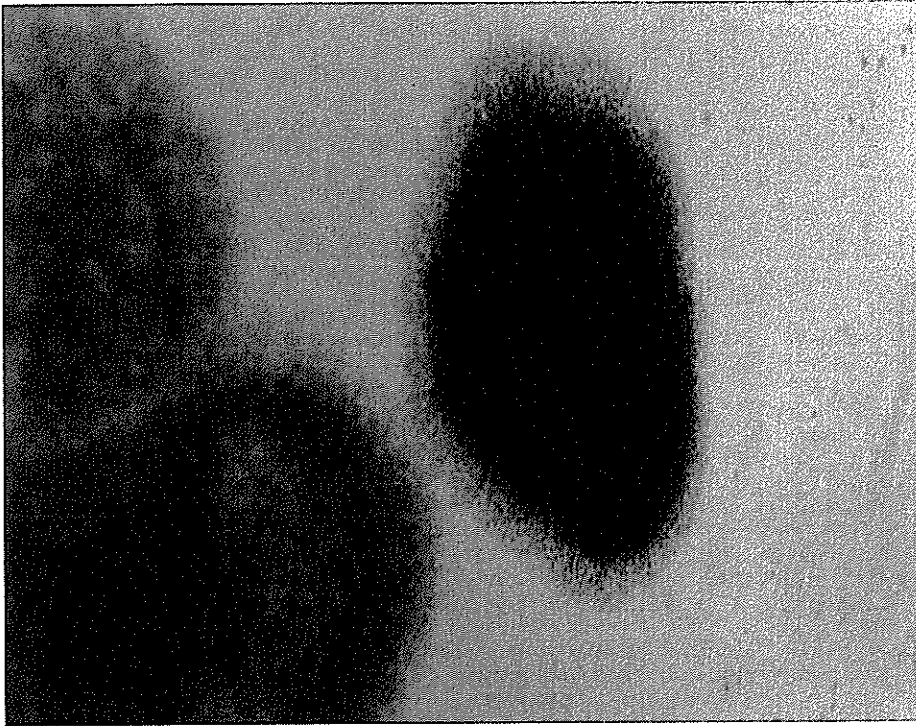


Mold on the bedroom of a HPD homeowner.



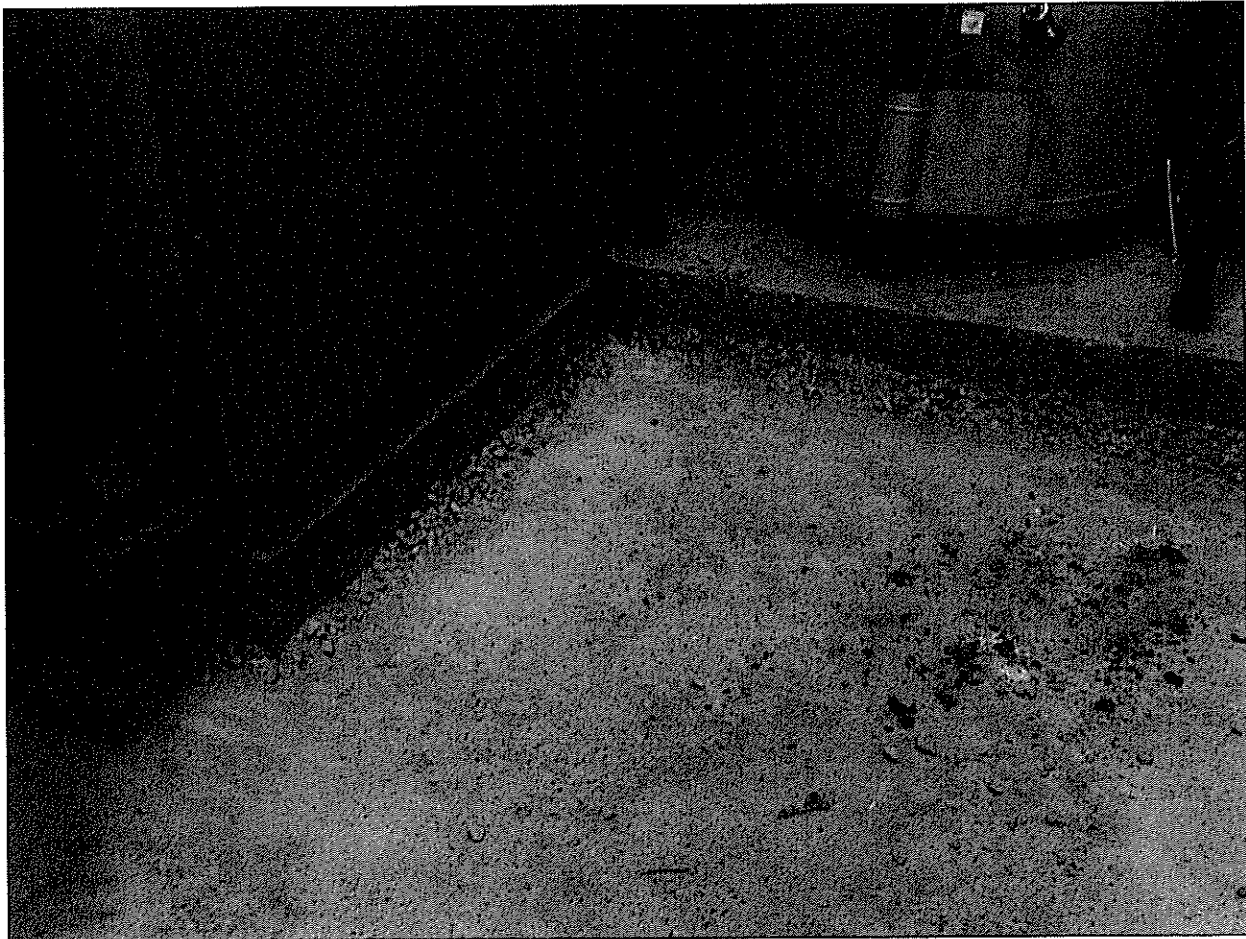
This mold grew in the moist common space of an apartment building.

MOLD



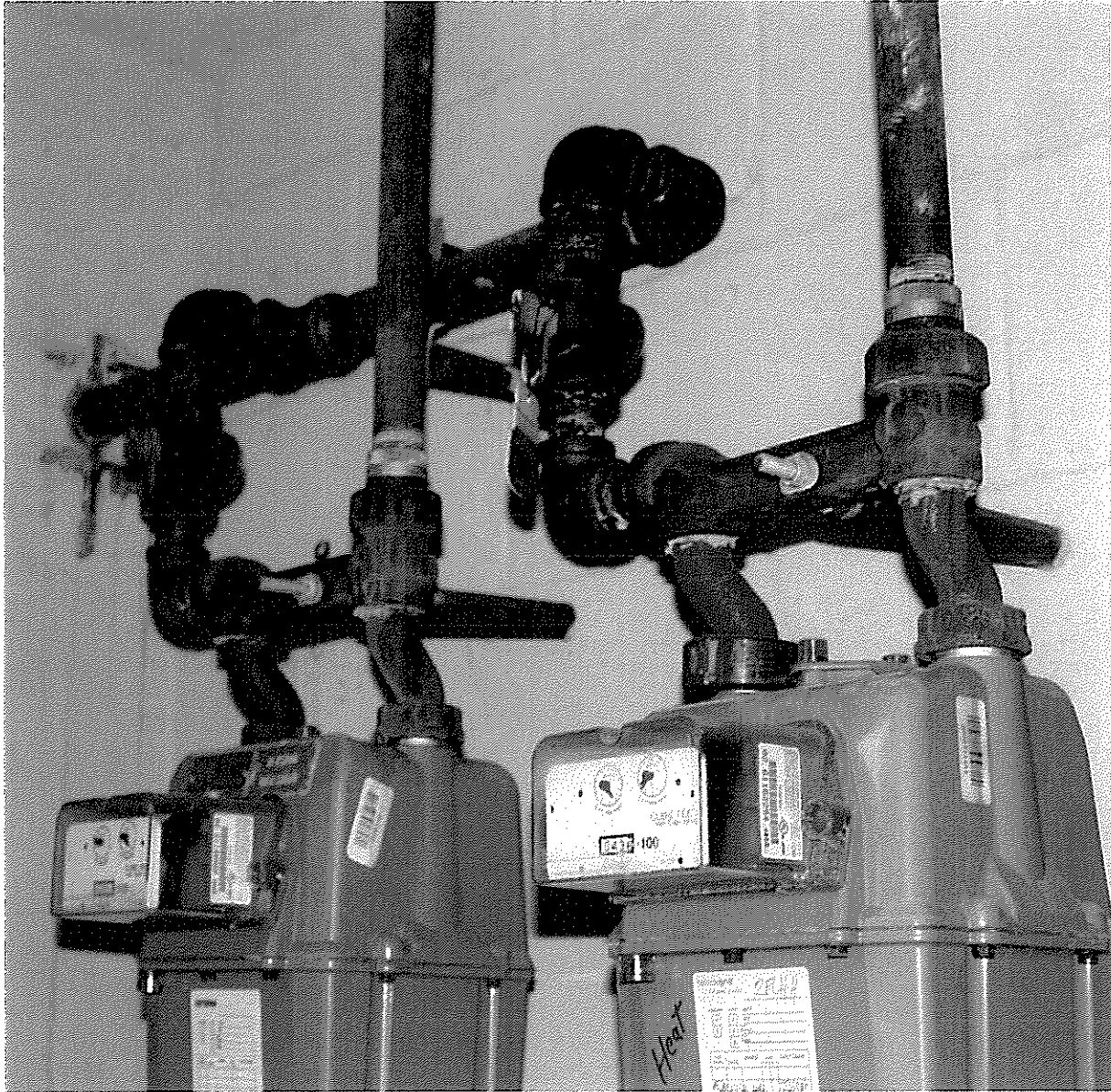
This mold grew in a kitchen ceiling.

FAULTY EQUIPMENT & SYSTEMS



The developer originally used combustible wood pallets beneath the boilers in over twenty homes in the Bronx. It was only discovered after a house fire caused by said wooden palette. Resulting City inspections cited and penalized the homeowners, not the developer, for Building Code violations and forced them to replace the pallets at their own cost.

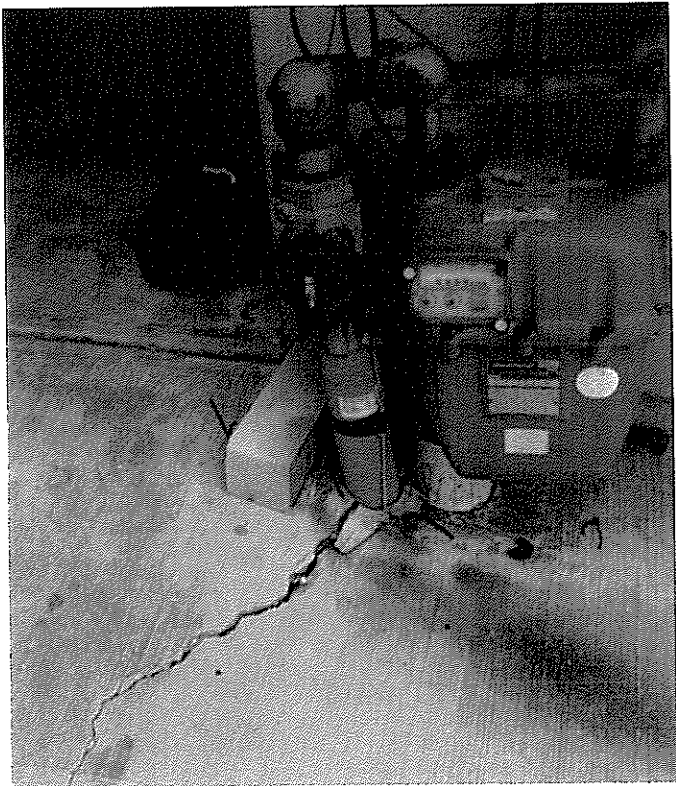
FAULTY EQUIPMENT & SYSTEMS



This piping is less than a year old and already rusting. We believe that inferior piping or poor installation is to blame.

FAULTY EQUIPMENT & SYSTEMS

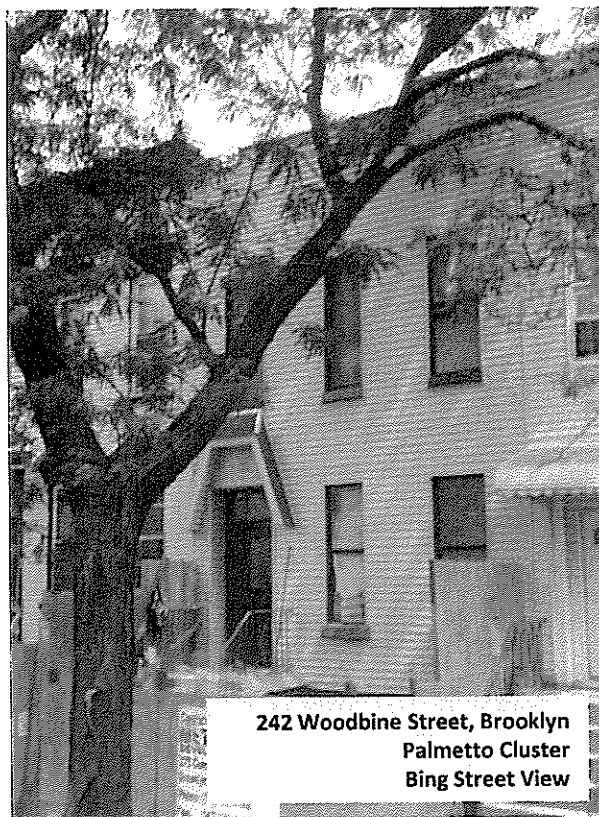
Pictured above is an attempted repair of pipe work in the boiler room with some type of foam spray.



Cracked cement around piping comprising affectivity and structure.

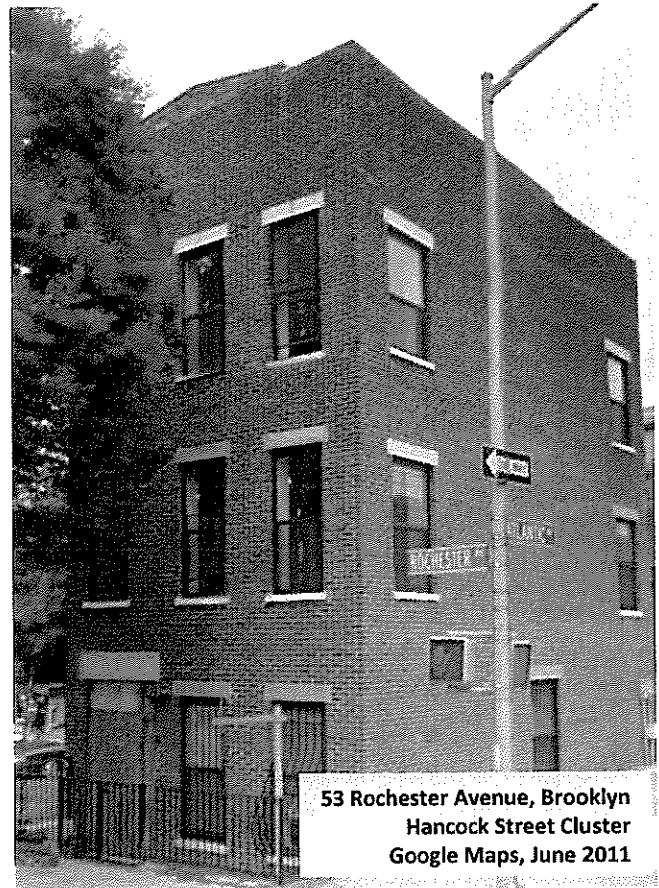
VACANCY

Resulting from incomplete or shoddy construction, many building and individual units constructed under HPD program are vacant or uninhabitable. While the total number of vacant units is unknown, these observations call into question the “units built” milestones of the City’s Affordable Housing Plan.



The Daily News reported vacant buildings in the Palmetto Cluster development in Bushwick Brooklyn. The eight building project is in limbo following indictment of both Sergio Benitez, the developer, and George Armstrong, the general contractor.

VACANCY



New York World reported that 224 Spencer Street and 53 Rochester underwent renovation as part of HPD's HomeWorks Program, but were never occupied. The Spencer Street property sits wrapped in white and blue plastic, as it has for over a year. The Rochester property was torn apart by thieves searching for copper pipes. These properties were part of the Hancock Street Cluster built by indicted developer Stevenson Dunn.

VACANCY

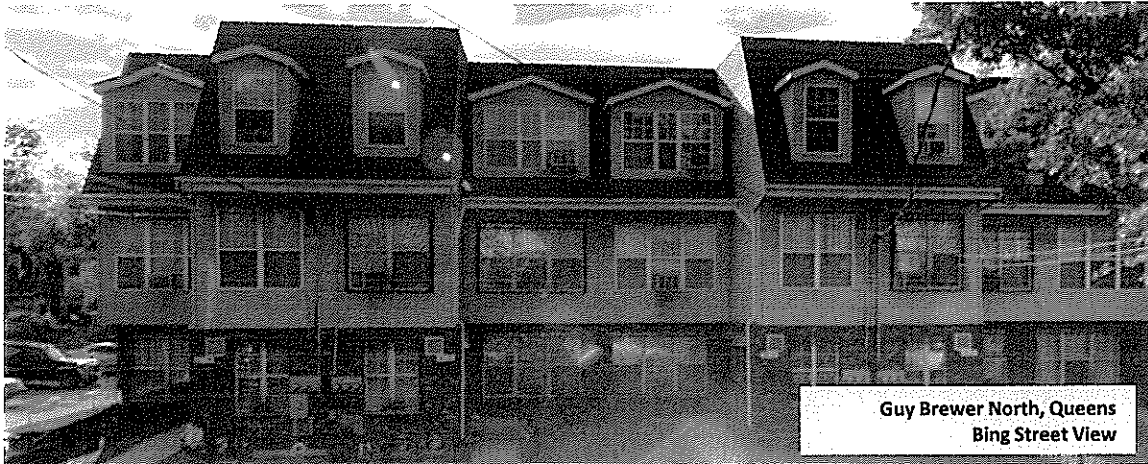
Retaining renters is also a problem in HPD buildings. We have witnessed vacancy in purchased two-family buildings in the Partnership New Homes Program. Homeowners buy the properties, planning to live in one unit and pay part of the mortgage with rental revenue from the other unit. Homeowners cannot maintain tenants because of shoddy construction, both wasting a unit of housing and making the home unaffordable to the purchaser. The homeowners themselves are locked in by subsidies they cannot afford to repay. One homeowner we spoke to invest an additional \$40,000 into repairs of her new home which was otherwise too cold to maintain a renter.

At 941 and 951 Hoe Avenue leaks plague the renters. Some floors were desolate, with only a couple units rented. These new buildings were construction by Joy Construction and finished in 2006.

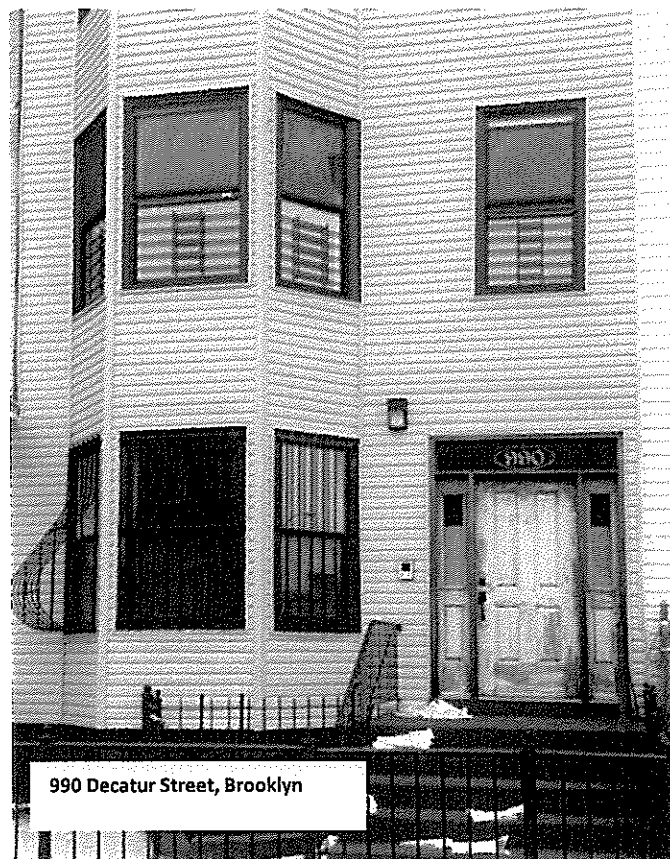


VACANCY

In Queens the Guy Brewer North Homes, built by convicted developer and contractor Bogden Starzecki, remain vacant even though some units earned final certificate of occupancies nearly two years ago.



This building in at 990 Decatur Street, Brooklyn was built by Delight Construction. It remains vacant despite having a final certificate of occupancy in 2009. The building is one of three in the Tompkins Park North Homes, which were all sold to the developer for \$1 a piece as part of the Neighborhood Homes Program.



Case Study in Vacancy & Quality Issues

1. Fire alarm in vacant unit sounds causing sprinklers to engage. Neighboring unit floods. Homeowner discovers minor construction problems and emails management regarding repairs.

From: [REDACTED]
Sent: Thursday, January 05, 2012 9:47 AM
To: [REDACTED]
Subject: RE: [REDACTED] Broadway Sprinkler Flood
Importance: High

Please advise when someone from The Domain Company will arrive today to assess the damages to my home from the adjoining house? All the rugs were ripped up from the rental apartment and upon doing so we noticed big gashes in the cement foundation, which leads me to believe these rugs were laid to cover up an unfinished job! Not only is there damaged walls, ceiling and fixtures, all the furniture has water damaged. All the tenants' food in the cabinets was damaged not to mention all her legal documents were damaged in the metal box. All the rugs that were removed were thrown all over the lawns please make sure they are properly disposed of by your maintenance crew.

2. Repair workers eventually respond, finding garbage stuffed in the bathroom wall. Owner emails management.

From: [REDACTED]
Date: January 7, 2012 7:15:10 PM
To: [REDACTED]
Subject: Rental Bathroom

Please see attached photos from the rental bathroom. Maxon had to cut the wall behind the toilet and this is what was in there. GARBAGE! The worker Hector pulled out garbage consisting of boxes, old dirty installation and SANDWICHES!!!! I paid close to \$500,000.00 for GARBAGE in the walls! He filled two big industrial black garbage bags with GARBAGE! I can't wait to hear the explanation from your company about this. I am reaching out to all the homeowners with regards to this, because I'm sure it was done in other homes as well.



Case Study in Vacancy & Quality Issues

3. DOB was contacted on discovering the wall was not built according to plan and did not meet the fire code. Violations were issued.

OF THE CITY OF NEW YORK, PETITIONER, AGAINST		ENVIRONMENTAL CONTROL BOARD	
Respondent Full name or entity name Alexander	Lead name Arker	City NY	Date NY
Mailing address Address (if different) 11 Park Pl.	City NY	Date NY	Zip code 100
Attention: heading to an agent, name of agency		Process Code	

Case type NO Demerits	Case name Bushlers	City NY	Date NY	Zip code 100
Mailing address				

Commissioner's Order To Correct Violations

Place of occurrence 67 Broadway	File # 5-2	Date of violation 01/12/12	Type CN	Code 01	Code UB	No.
Violator type LL	PL # 5151221	# of stories 3	Block 169	Lot 22	Block of inspection Bushlers	State of violator 509575

Violating Conditions Observed	Stop Work Order <input type="checkbox"/> Full <input type="checkbox"/> Partial	Class 1 <input checked="" type="checkbox"/>	Class 2 <input type="checkbox"/>	Class 3 <input type="checkbox"/>	Remaining Conditions
	Project Code B282 28-105-12-2	Position of Law Work does not conform to approved construction documents & approved amendments - note	Job # 510026936 - Detail 10 (Fire Division) states - 2 layers of 5/8 GWB are applied to "each side" of "3/4" Steel studs. Note - at time of inspection only 1 layer of 3/4 GWB installed on each side of "67 and 63 B."		
Remedy: Conform to approved plan - file for TR1 for proper fire Division					

<input type="checkbox"/> ILLEGAL CONVERSION - CLASS 1; Per 24-202.1 & 24-202.1-1 (FCNY 105-D1) additional daily penalties for continued violation of 24-202.1 also applicable.	<input type="checkbox"/> Aggravated if Conv per FCNY 105-D
The Commissioner of the Department of Buildings orders that you correct these violations and file a certificate of such correction.	

Important information: As stated in § 24-202.4 and Section 24-203.1 of the Code of the City of New York, violations may be subject to additional penalties if not corrected as directed in accordance with the E.C.B. E.B. Violator Penalty Schedule.

Resolution options	
CURE DATE <input type="checkbox"/>	HEARING DATE 03/07/12 at <input checked="" type="checkbox"/> 9:30 AM <input type="checkbox"/> 10:30 AM <input type="checkbox"/> 1:30 PM
If a date appears in the box above, you may have the option to admit the violation and certify correction by the "cure date." By doing so, you avoid a hearing before the Environmental Control Board and any penalties which would be assessed at the hearing. Note: Depending on the violation, non-ECB civil penalties may apply before a cure can be granted. For more information, see reverse side of the respondent copy of this Notice of Violation.	
<p>The hearing date above is mandatory if you are an owner with a Class 1 violation, or the violation is marked as an "Aggravated" violation, or if the "Cure date" is less than 30 days of violation. Note, the above hearing date is mandatory only if the violation is a violation of Chapter 24 (a) or (c), as received by the date indicated in this notice, or if not such a violation, a hearing date will be scheduled but may not timely respond to a pre-hearing situation. Refer to the E.C.B. Violator Table for the hearing date of non-ECB violations or check the violator status on the E.C.B. query on the website. YOU MUST ATTEND THE HEARING IF YOU WISH TO CONTEST THE VIOLATION!</p> <p>Environmental Control Board hearing locations:</p> <ul style="list-style-type: none"> Queens (718) 292-1500 - 144-04 14th Avenue, 2nd fl. Manhattan (212) 241-1400 - 46 John Street, 10th fl. Brooklyn (718) 575-7428 - 283 Kensington Street, 10th fl. Bronx (718) 622-6110 - 3030 3rd Ave., 2nd fl. Staten Island (212) 581-1400 - 350 St. Marks Place, 1st fl. <p>Proceedings will be held under the authority of the First Chapter section 1019-b and the rules promulgated hereunder. This hearing is your opportunity to answer and defend against the allegations set forth above. Failure to appear, unless an appearance is not required through availability of a Cure or Stopwork order reversal, will result in a default and imposition of maximum penalties.</p> <p>For more information, to reschedule your hearing or inquire about the case status, call the Environmental Control Board at the telephone listed above. Information on compliance resources is available at the Department of Buildings website, call the Department of Buildings at 311, or visit the "ECB Violation Reference Guide" on the Reference Materials section at www.dob.gov/buildings.</p>	

Jan. 11. 2012 10:25AM

No. 4408 P. 2



NEW YORK

PLUMBING • HEATING • COOLING • CORP.

87-71 Lefferts Boulevard, Richmond Hill, NY 11418
(718) 441-6800 • (718) 441-7400 • FAX (718) 849-2905

CONTRACT

PN#108835
January 11, 2012

Plumbers Local #1
158-19 George Meany Blvd
Howard Beach, NY 11414
Attention: Donald T. Doherty Jr.

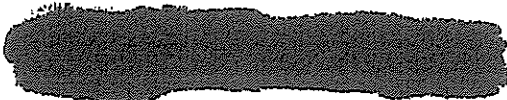
RE: Sewer Repair/146 Lexington Ave

Furnish necessary labor equipment and material to replace section of Building Drains and sewers as follows:

1. Obtain NYC Dept of Transportation street & sidewalk operating permit.
2. Obtain NYC DEP Combine sewer repair permit.
3. Obtain NYC Dept of Buildings L.A.A plumbing permit for repair of 6" storm and 6" sewer sanitary drain inside house.
4. Obtain code 53 utility mark out of underground utilities in front of house.
5. per DOT rules and regulation excavate an opening in sidewalk in front of premises to allow access to sewer
6. From area inside house 15 from house trap pit under interior stair case. Install new 6" extra heavy cast iron pipe and fitting for storm and sanitary building drain. Setting pipe at proper grade
7. Obtain NYC DOB inspection for piping inside premise.
8. Install new 6" extra heavy cast iron from new house traps under exterior stairwell to existing combine sewer line in side walk are in front of premises.
9. Obtain DEP sewer inspection.
10. Backfill, compact and restore exterior sidewalk per DOT rules and regulations.

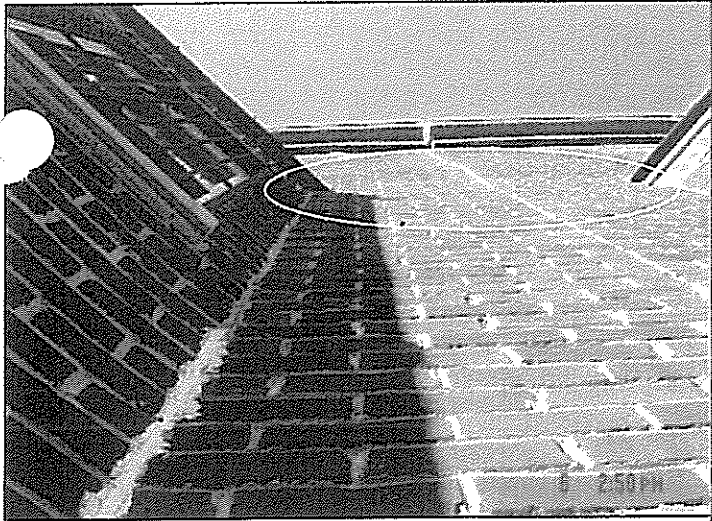
AMOUNT \$35,680.00 plus sales tax if applicable.
THIRTY FIVE THOUSAND SIX HUNDRED EIGHTY DOLLARS & ZERO CENTS

- NOTE:
1. Until the inside of premises is excavated we do not know if additional pipe leading into Roadway needs to be replaced to correct the drain pipe.
 2. All excavation and restoration on property and inside house is being performed by others.

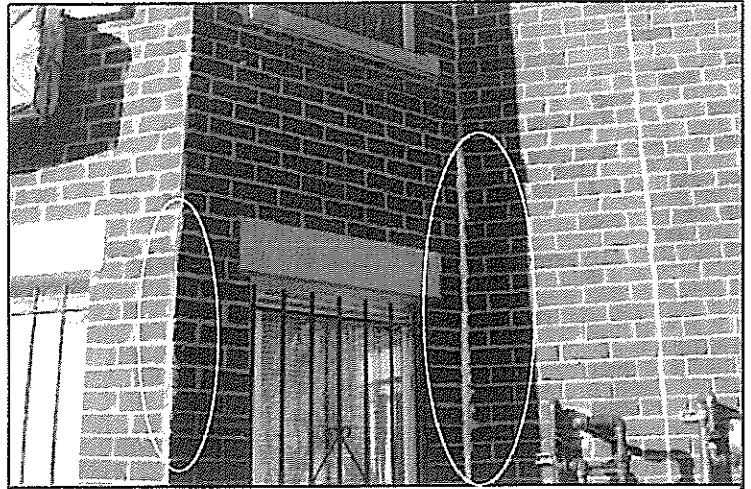

Brooklyn, NY 11216

Baseline photos – November 6, 2011
Outlining present condition of residence

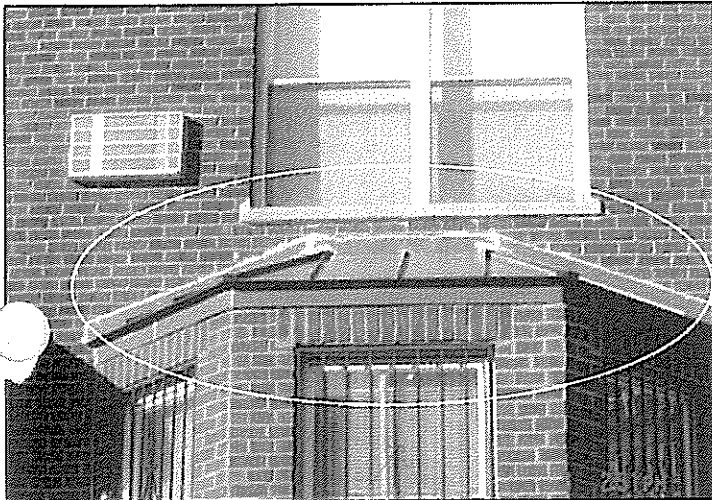
This is a multi-family residence situated at the above address. Homeowner requested site visit to record problems and prepare report outlining observations on the day of the inspection.



Picture 1 – Large bulge in brick veneer above second story bump out.



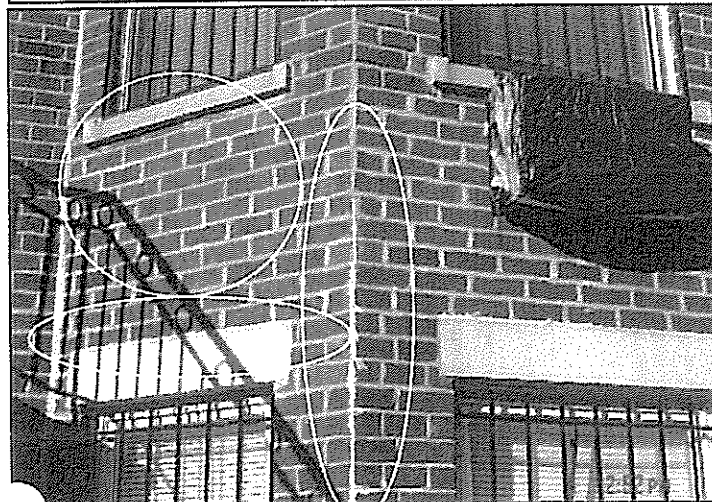
Picture 2 – Caulking applied along vertical mortar joint. This is typical of all first story brick miter joints.



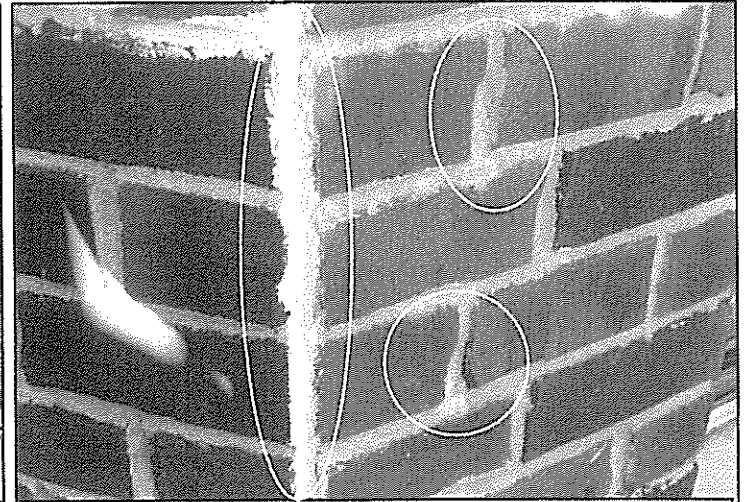
Picture 3 – Liberal use of caulking along cap for bump out. This area corresponds to interior damage and repairs.



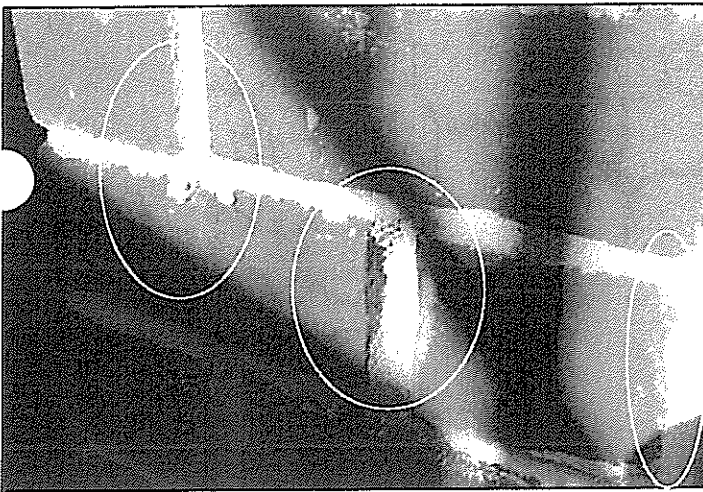
Picture 4 – Bulge in brick veneer extends the length of building exterior parallel to window lintel.



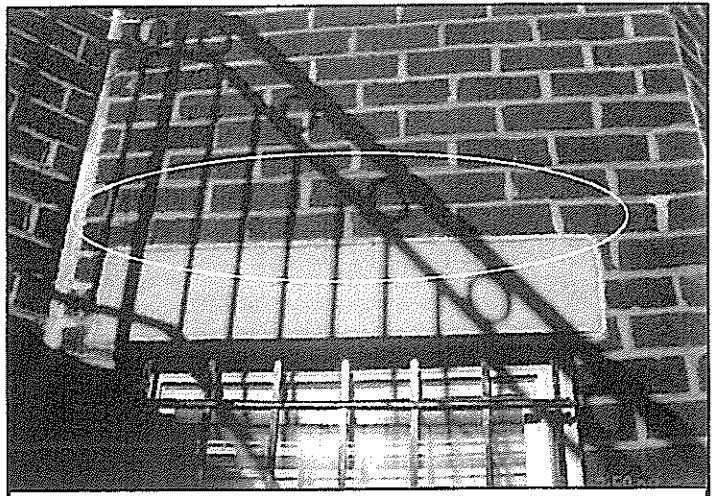
Picture 5 – Liberal use of caulking on vertical brick miter joint. No weep holes observed for lower level lintel. Re-pointing observed.



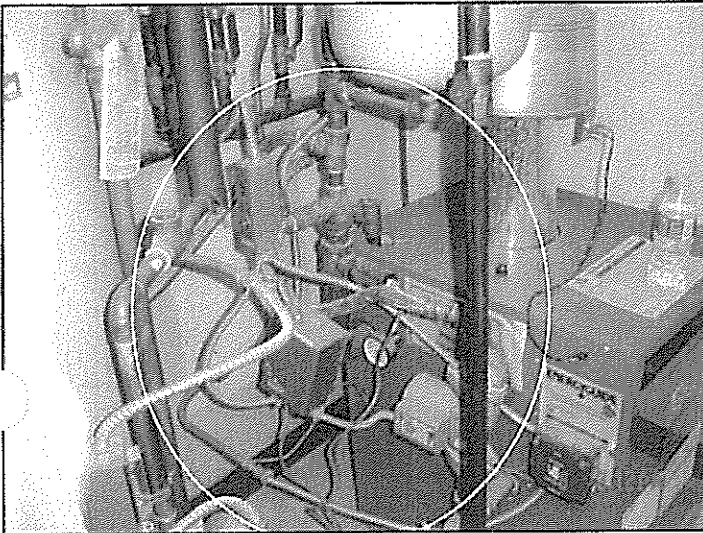
Picture 6 - Damage bricks observed. Back cut bricks used along main façade. Large open joints observed as a result.



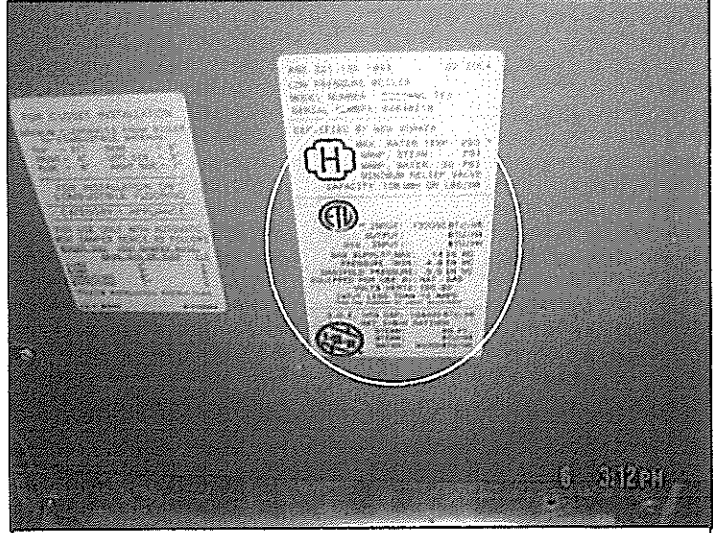
Picture 7 – Deep open mortar joints observed. Poorly applied mortar. Re-pointing observed.



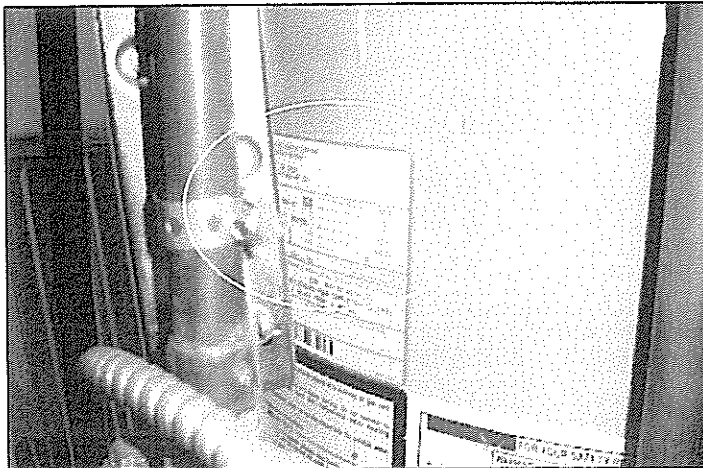
Picture 8 – No weep holes observed for proper drainage.



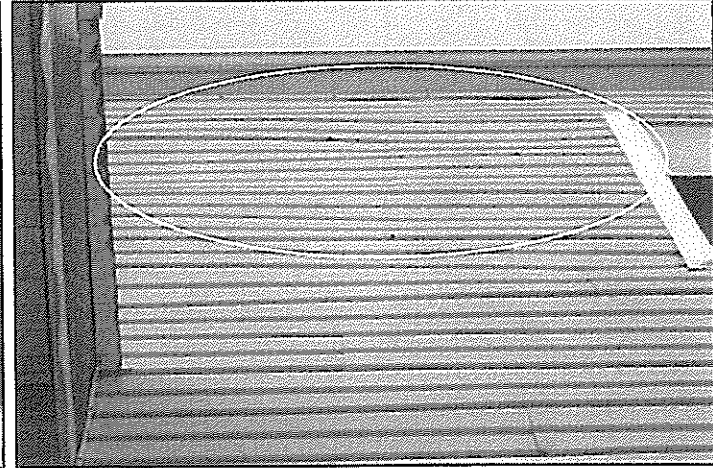
Picture 9 – Plumbing connections to central heating unit using braided connections. Poor installations practices for electric and plumbing connections.



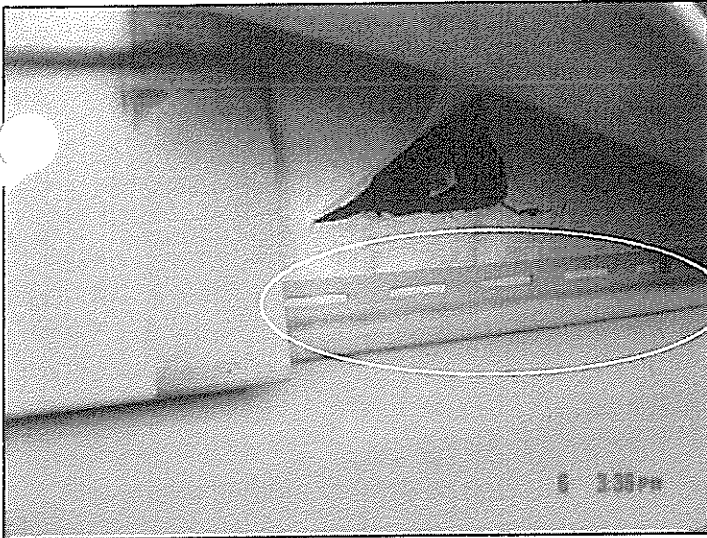
Picture 10 – Central heating unit. Building plans specify 150,000 Btu/hour input. Actual unit rated for 130,000 Btu/hour.



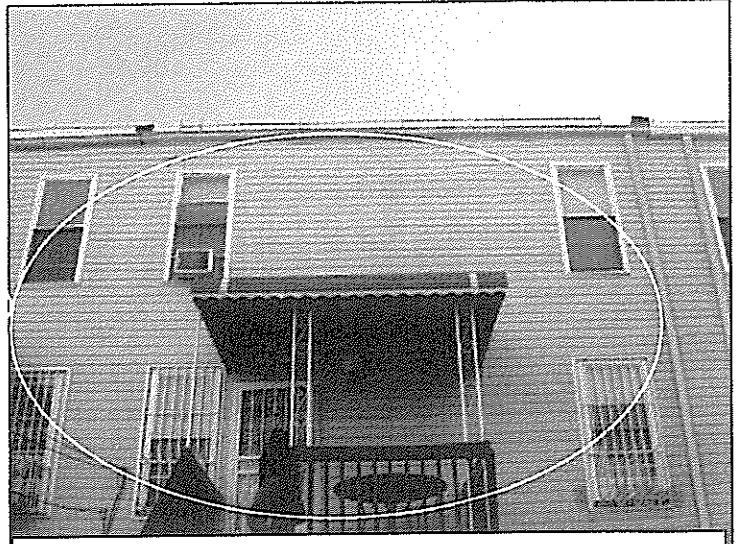
Picture 11 – Building plans specify 75 gallon capacity for hot water heater. Actual unit capacity rated for 50 gallons. Wood blocks used to support unit.



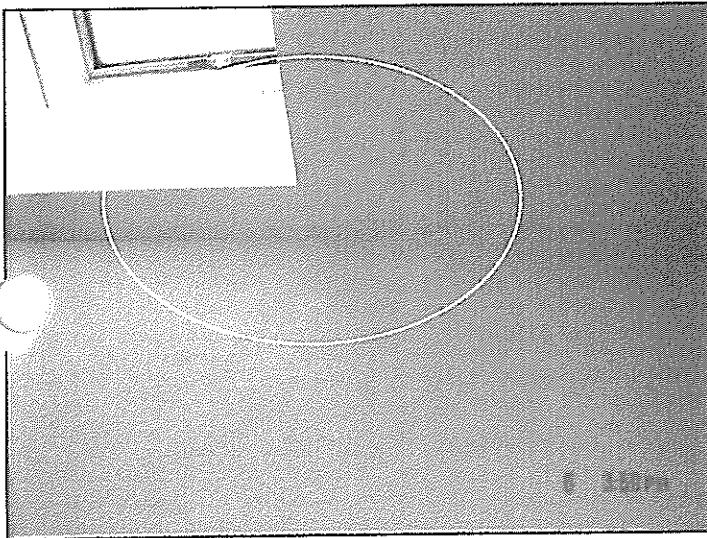
Picture 12 – Rear exterior siding improperly installed. Extensive bulging observed throughout exterior. No separation of siding between attached building.



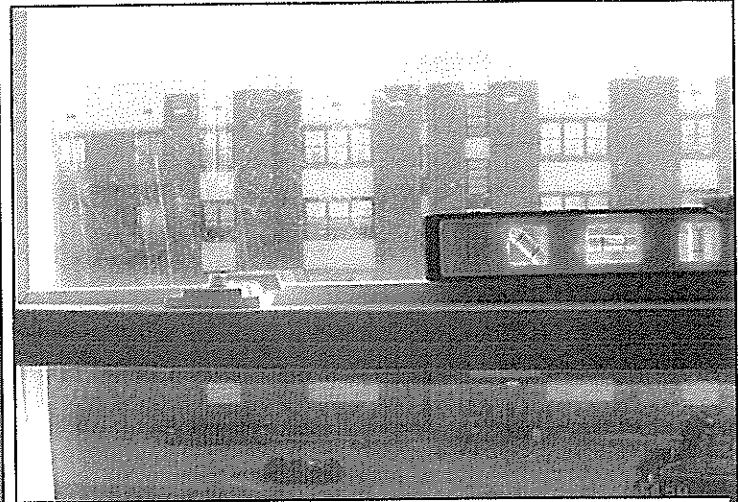
Picture 13 – Rear exterior fasteners are tight to siding. No room for expansion and contraction.



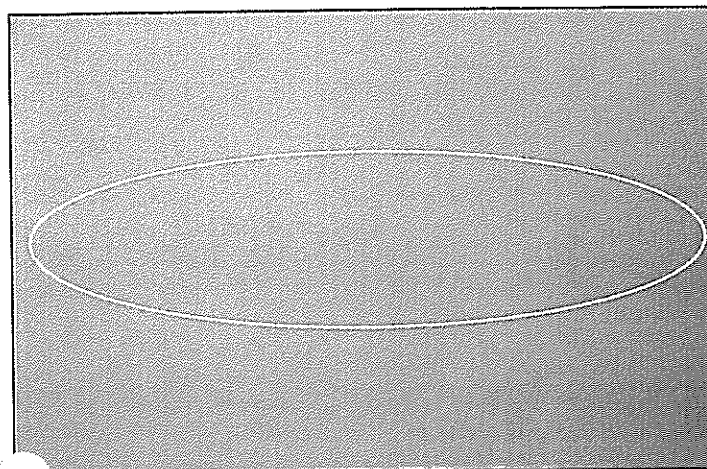
Picture 14 – Rear exterior has no separation between attached homes to permit individual repairs.



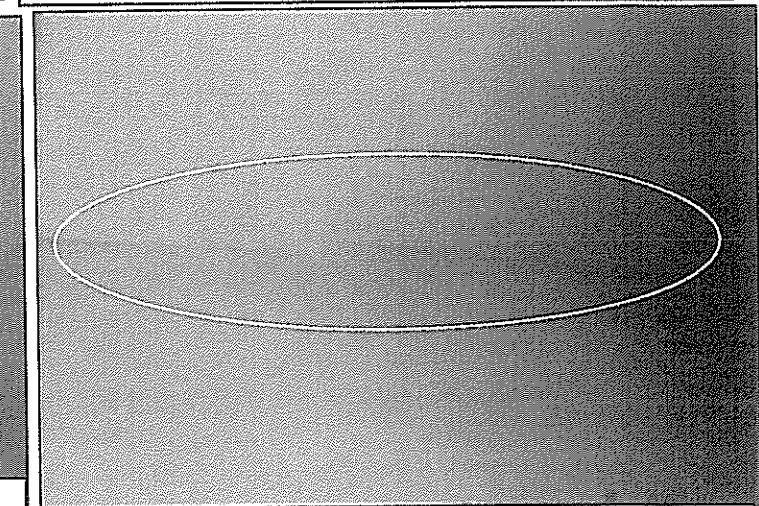
Picture 15 – Water damage observed at skylight opening. Several repairs to interior observed.



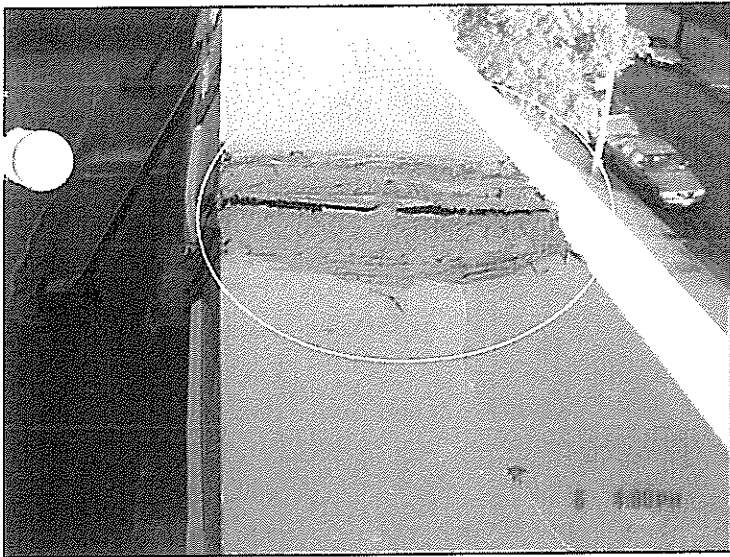
Picture 16– Facing south. Level shows windows not set properly in opening. Upper sash out of plumb. Typical of several windows at this residence.



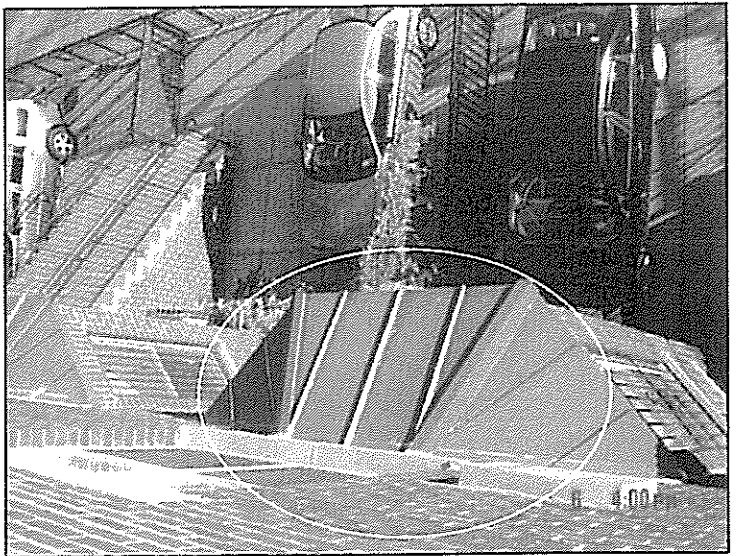
Picture 17– Living room ceiling on top level. Previous repair as a result of roofing related problems.



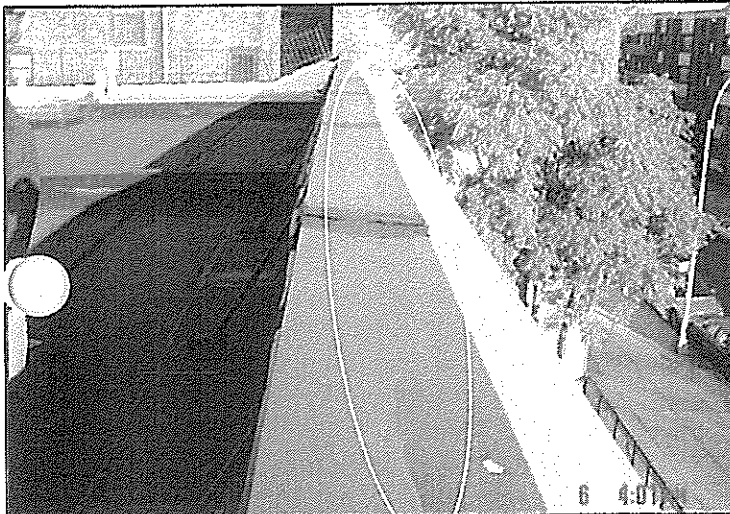
Picture 18 - Northwest corner of northeast bedroom on top level shows damage from settling.



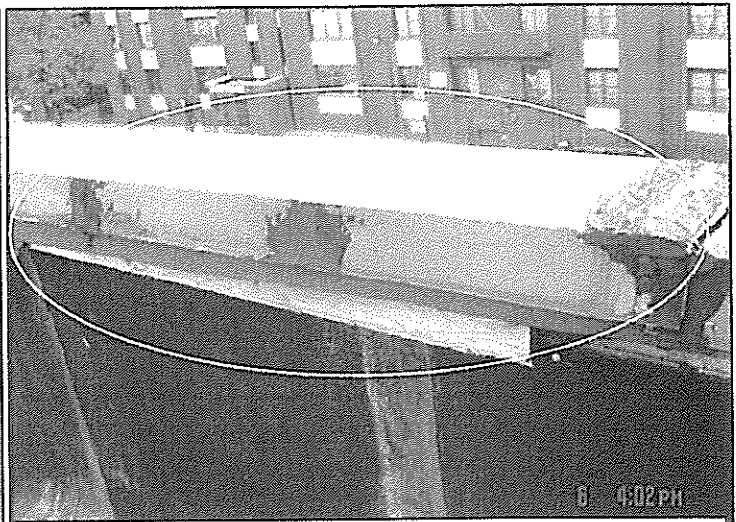
Picture 19– Facing east – large opening at aluminum cap joint for parapet.



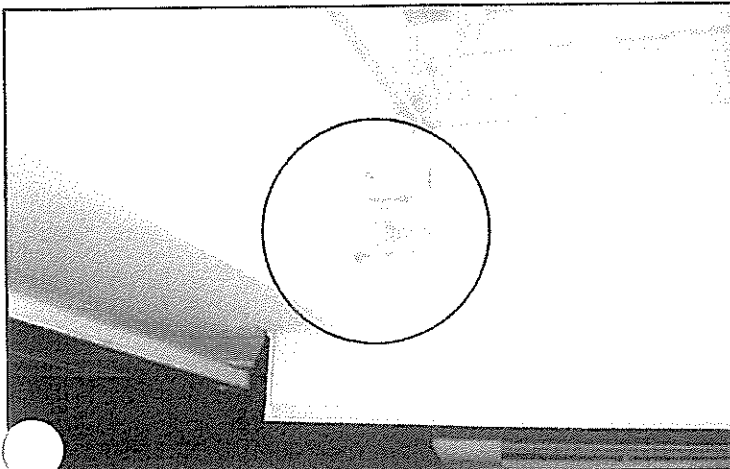
Picture 20– Looking down from roof. Heavy application of caulking on cap for bump out.



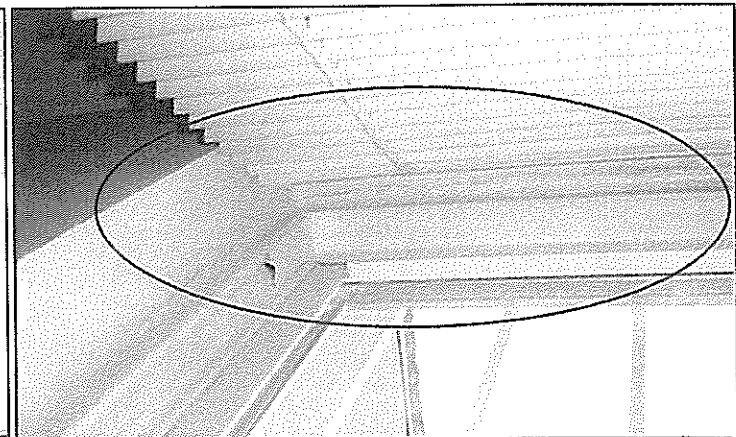
Picture 21– Facing east – damage along entire parapet cap.



Picture 22– Facing south – small section of wood used as nailing surface to secure cap.



Picture 23– Facing north – water damage and staining in kitchen window of second floor.



Picture 24– Facing north – open seam along top rail of kitchen window on second floor. Improper installation suspect.

Client: [REDACTED]
Location: [REDACTED] Brooklyn, NY 11216
Subject: Residential home inspection
Date of Service: November 6, 2011

This inspection covers only the areas of the home where the owner has experienced problems. This home was constructed several years ago. No Certificate of Occupancy appears under the address for the Department of Buildings. This is unusual considering the home is occupied. The attached report outlines the finding with photos taken on the day of the inspection. Additionally, a copy of the Department of building website listing is also attached. The findings are not listed in order of importance. Please read this report carefully.

Exterior:

The following items were observed:

1. The exterior brick work for the main façade has been improperly installed. Large bulges were observed above the second level lintel. It is possible that this damage to the exterior was caused by frost heave as a result of improper drainage. This condition is the cause of great concern since the building is fairly new and the amount of displacement is significant. A section of the façade must be removed to determine the cause of displacement. Once the cause has been determined, the corrective work can commence.

1a. The quality of the bricks and the method of installation are questionable. Heavy mortar application and brick joinery are less than acceptable. All areas where the mortar is overlapped or deeper than the maximum depth from the brick face must be reset. Attempts to re-point sections of the exterior were observed. The method of re-pointing is not acceptable.

1b. Mitered bricks are used on straight facades. Irregular shaped bricks were observed along the lower level. Only square faced bricks should be used in these areas. It appears that these bricks were available and therefore employed during the construction of this façade.

1c. The heavy use of caulking was observed along the vertical mitered joints along the main and second level. It appears that the caulking was employed to eliminate exterior leaks. The present owner stated that exterior leaks were experienced and the contractor made numerous repairs. The poor method of installing the brick veneer and the liberal use of caulking are strong indications that water infiltration problems can be expected in the future.

1d. The lack of weep holes was observed over several lintels on the main façade. The weep holes permit trapped moisture to escape from behind the brick veneer. The weep holes can be installed.

1e. The liberal use of caulking was observed throughout the aluminum cap for the bump out on the second level. The flashing for the cap does not appear to have been installed correctly. The present owner stated that the interior damage to the ceiling corresponded to this area.

2. The rear vinyl siding has not been installed correctly as evidenced by the large bulges and uneven surfaces throughout the entire rear facades of all the newly installed homes.

2a. The fasteners for the siding were installed without any ability for the siding to flex and move with temperature changes. The siding may have been installed during cold temperatures. Since the siding is fixed in place, any expansion results in large bulges throughout the rear façade.

2b. Further compounding the problem is the fact that there is no separation channel between the units. Separation channels allow each owner to be responsible for the repair and replacement of their exterior siding without interfering with the exterior of the adjacent unit. Without these separation channels, the bulging is even more pronounced. The siding must be removed and properly installed.

3. Several windows have not been installed correctly as evidenced by the inability to lock several units.

3a. The upper sashes does not remain in their upright position. Forcing the sashes apart does not always yield the desired results.

3b. The building plans provided show aluminum clad and vinyl clad units depending on schedule. All units appeared to be vinyl clad.

3c. The dining room window on the second level was observed to have water leaks on the sill and upper sash connection. Further investigation is required.

3d. Although problems with several units were observed. Any and all defects can be corrected by removing the affected sash and correcting the alignment problem.

Roofing System:

The following items were observed:

1. Damage to the aluminum cap for the parapet wall was observed. Open joints and damage was observed throughout the cap. Interior repairs to the ceiling corresponding to this area were observed.

1a. A wood strip was used as a nailing surface to repair the cap. This is unacceptable. The open areas must be properly sealed. The cap should be removed and properly installed to ensure weather tightness to the roofing system.

1b. Interior damage and repair was observed along the opening for the skylight. The present owner stated that the contractor was required to return and make the necessary repairs.

1c. Damage to the interior wall separating the bedrooms on the top level were observed. It is possible that the damage is not roof related but the more probable cause is settling.

Certificate of Occupancy:

1. The present owner stated that he has not yet obtained a Certificate of Occupancy from the Department of Buildings.

1a. A visit to the Department of Buildings website confirmed that a Certificate of Occupancy for this address is not available. No outstanding violations were observed. Further investigation is required.

Central Heating Unit and Distribution:

1. The building plans specify the make and model number for the central heating unit as a Weil McClain MEA#159-75-E, model EG-45. This model has an input rating of 150,000 Btu/hour and an IBR of 106,000 Btu/hour. The actual unit is a New York Boiler unit with an input rating of 130,000 Btu/hour and an IBR of 94,000 Btu/hour.

1a. These are not equivalent units in size and output. The unit presently in operation is significantly smaller than the unit specified.

1b. Zone valves were observed for the central heating unit. Therefore, there is some control over the distribution throughout this building.

1c. The net output of the actual unit is rated for 94,000 Btu/hour. Considering the three floors, total surface area and the configuration of the distribution, it appears that the system is balanced.

1d. The plumbing and wiring in the immediate vicinity of the central heating unit has not been installed in a professional manner as evidenced by the sloppy installation technique.

Hot Water Heater:

1. The hot water heater specified in the building plans call for a 75 gallon capacity unit. The actual unit is rated for only 50 gallons.

2. At the time of the inspection, the hot water heater constantly cycled indicating that it was undersized for the level of demand.

3. Wood blocks were observed. These block should be replaced with masonry units and secured to the basement floor.

Disclaimer:

All test equipment and the appliances which were stated to have been tested, were tested for electrical and mechanical operation only. No judgment is offered or implied as to the quality or the efficiency of operation of those items under normal conditions. Other appliances which are considered as necessary and not paid for in the fees properly were not tested.

This inspection is limited to what is visually accessible by means of the normal and reasonable use of the eyes and the use of the senses. It is limited to those recommendations. Since internal wiring, conduit, pipes, etc. are not accessible for inspection, they cannot be covered upon in this report. This report does not include nor does it make representation on including any portion of the house not usually seen nor capable of being seen. This report represents only existing on the day of inspection only, and is not to be construed as a guarantee or warranty of any kind. This report is also not intended for the purpose of appraising the house and property or fixing a value on it. The security, privacy and property of the present owner should be respected in any way during this inspection.

Scope of This Inspection

The scope of this inspection is limited to a visual inspection of the general systems and components of the home to identify any system or component listed in the report which may be in need of immediate major repair.

Outside the Scope of the Inspection

Any area which is not exposed to view or is inaccessible because of soil, walls, floors, carpets, ceilings, furnishings or any other thing is not included in this inspection.

This inspection does not include destructive testing or dismantling. The client agrees to remove all the dust for all conditions which are excluded from the scope of this inspection.

This is not a warranty, guarantee, insurance policy or substitute for real estate transfer disclosures which may be required by law.

Whether or not they are corrected, the following are outside the scope of this inspection:

- Building code and ordinance violations.
- Geological and soil conditions.
- Structural stability or engineering analysis.
- Termites, pests or other wood destroying organisms.
- Radon, radon formaledehyde, lead water or air quality.
- Electromagnetic radiation or any environmental hazards.
- Building value appraisal or cost estimates.
- Condition of detached buildings.
- Soils, spots or underground seeping.
- Special components noted as being excluded on the individual system inspection forms.
- Private water or private sewer systems.
- Gas, steam, leaks or fixtures and equipment.
- Radio controlled devices, automatic gates, lifts, elevators, dumbwaiters and thermostats, or time clock controls.
- Water softener/filtration systems or solar heating systems.
- Exhaust heat exchangers, free standing appliances, security alarms and personal property.
- Adequacy or efficiency of any system or component.
- Condition of title or ownership of any item.

Arbitration:

Any dispute concerning the interpretation of this agreement or arising from the inspection and this report, except for the dispute for payment, shall be resolved informally between the parties or by arbitration conducted in accordance with the rules recognized by the Arbitration Association, except that the parties shall select an arbitrator who is familiar with the home inspection industry. The arbitrator shall conduct summary judgment hearings and enforce full discovery rights as the courts would as provided in civil procedure by legal rules.

Use By Other

The client promises that the client has this inspection for the client's own use only and will not disclose any part of this inspection report to any other person with these exceptions: only one copy may be provided to the current owners of the property for their use as part of their transaction, and one copy may be provided to the real estate agent representing the client and/or broker to retain for use in the client's transaction only.

Attorney's Fees

The prevailing party to any dispute arising out of this agreement, the inspector, the reporter shall be awarded all attorney's fees, arbitrator and other costs.

Severability

Client and inspector agree that should a Court of Competent Jurisdiction determine and declare any portion of this contract is void, voidable, or unenforceable, the remaining provisions and portions shall remain in full force and effect.

Disputes

The client agrees that any claim for failure to accurately report the visually accessible conditions of the subject property, as limited herein above, shall be made in writing and reported to the Inspector within ten business days of discovery. Client further agrees that, with the exception of emergency conditions, client or client's agents, employees, or independent contractors, will make no alterations, modifications or repairs to the claimed discrepancy prior to the reinspection by the inspector. Client understands and agrees that any failure to notify the Inspector as stated above will constitute a waiver of any and all claims for the said failure to accurately report the condition in question.

Limitation on Liability

The inspector's liability for mistakes and omissions in this inspection report is limited to the refund of the fee paid for the inspection and the report. The liability of the inspector's principals, agents and employees is also limited to the fee paid. This limitation applies to anyone who is damaged or has to pay expenses of any kind because of mistakes or omissions in the inspection and the report. That liability limitation is binding on client and client spouses, heirs, personal, assigns and anyone else who otherwise may claim through the client. The client agrees will release parties from the fee paid for the inspection. The client agrees to immediately accept a refund of the fee as full settlement of any and all claims which may ever arise from this inspection and report.

Copyright protection

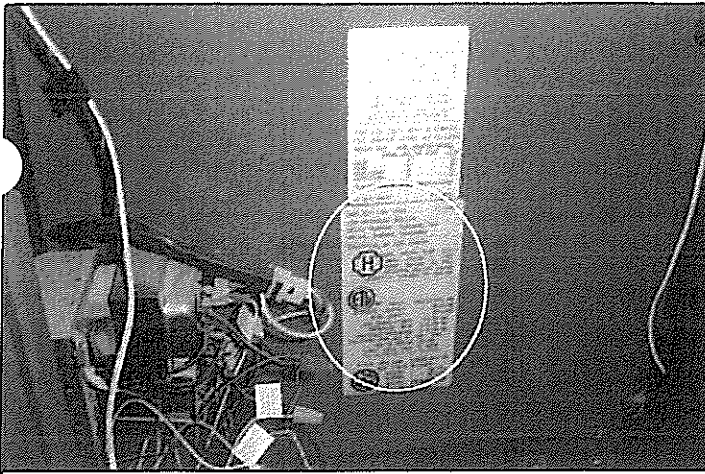
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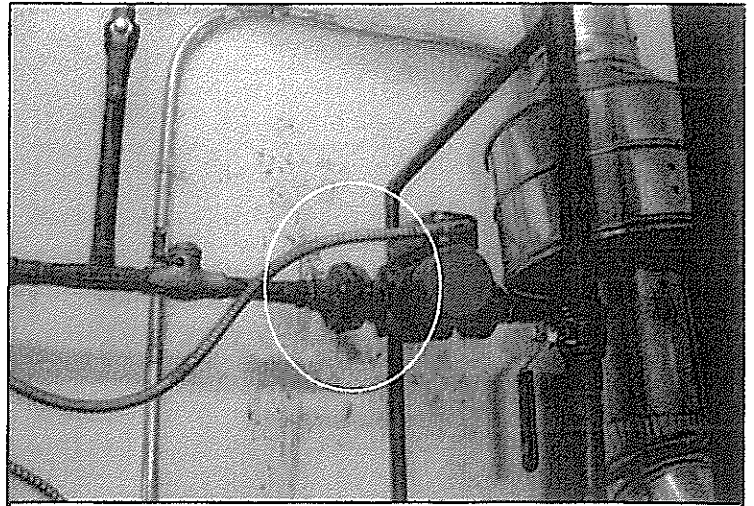
Brooklyn, NY 11216

Baseline photos – November 6, 2011
Outlining present condition of residence

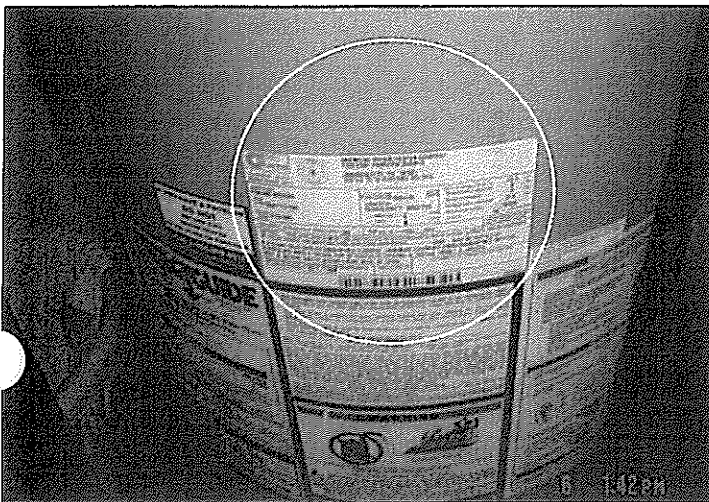
This is a multi-family residence situated at the above address. Homeowner requested site visit to record problems and prepare report outlining observations on the day of the inspection.



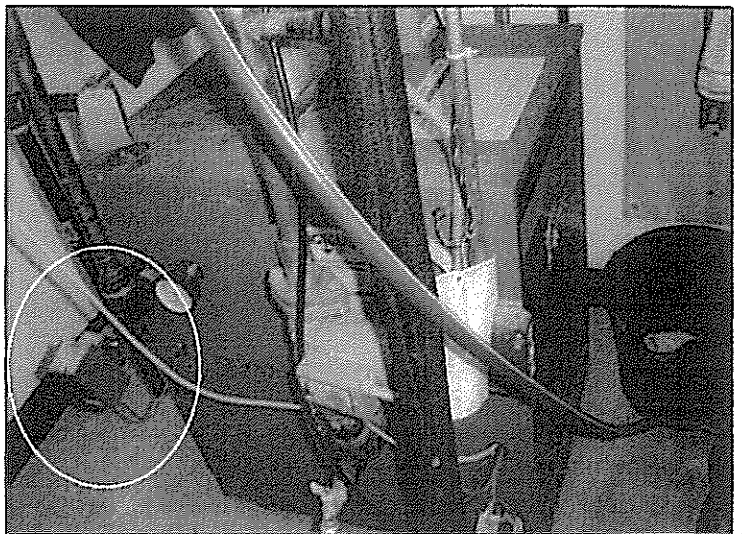
Picture 1 – Central heating unit rated for 150,000 Btu/hour as per building plans. Actual unit rated for 130,000.



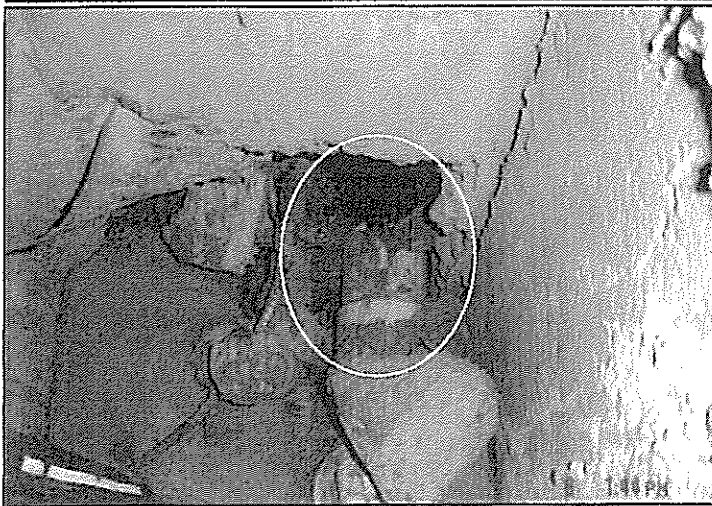
Picture 2 – Leaking flange on circulator for hot water heater.



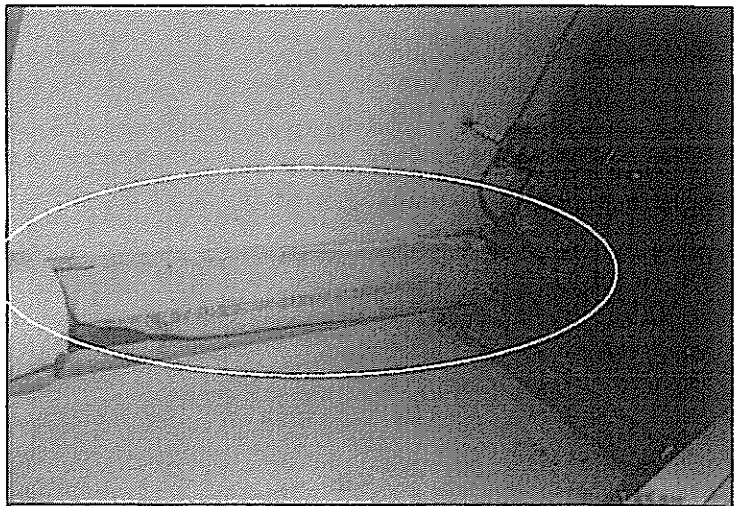
Picture 3 – Natural gas hot water heater rated for 75 gallon capacity on building plans. Actual unit rated for 50 gallon capacity.



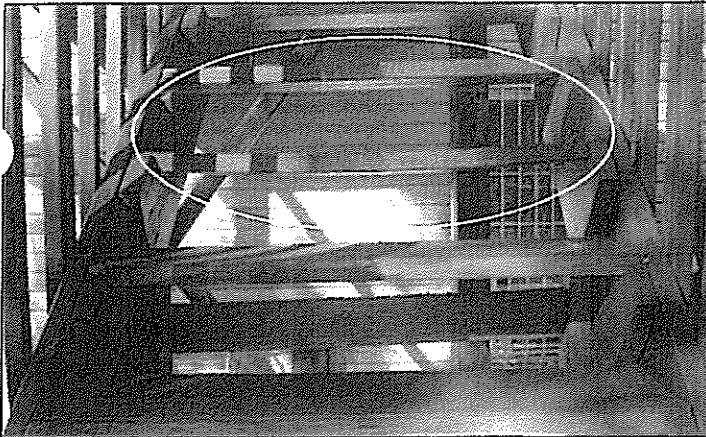
Picture 4 – Aquastat on central heating unit not properly installed. Hanging loose on return line.



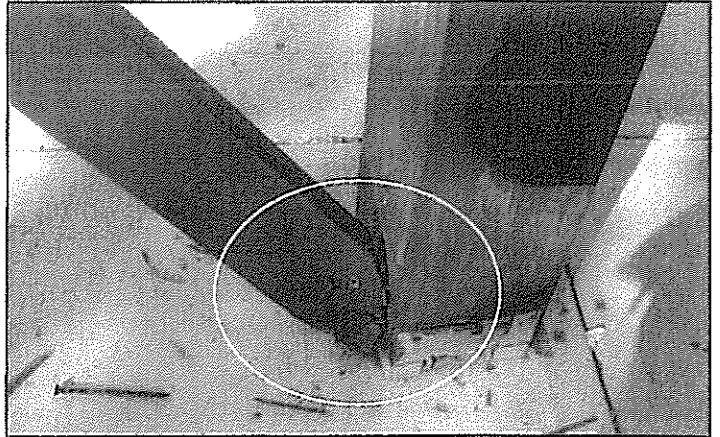
Picture 5 – Main sewer line at access pit. Building plans show cast iron. Actual material appears to be PVC.



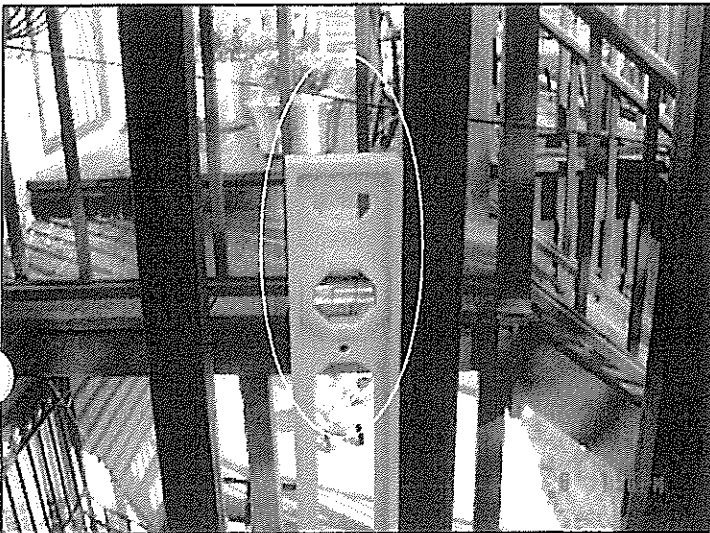
Picture 6 - Overflow located at access pit. Material appears to be PVC and not cast iron as stated on building plans.



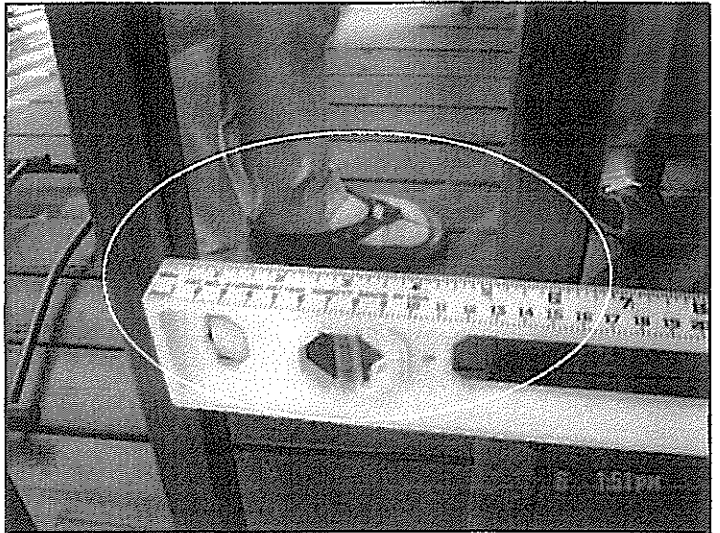
Picture 7 – Facing north. Several steps slightly buckled. This step and others appear to have been installed with crown upside down.



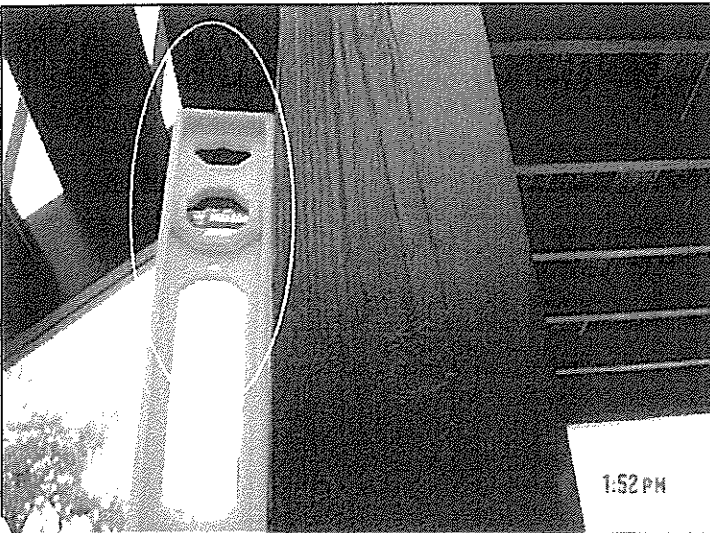
Picture 8 – Cross member for elevated deck not properly fastened. Damage to timber end observed. Cross members in tension at time of inspection.



Picture 9 – Facing east. Typical balusters out of plumb.



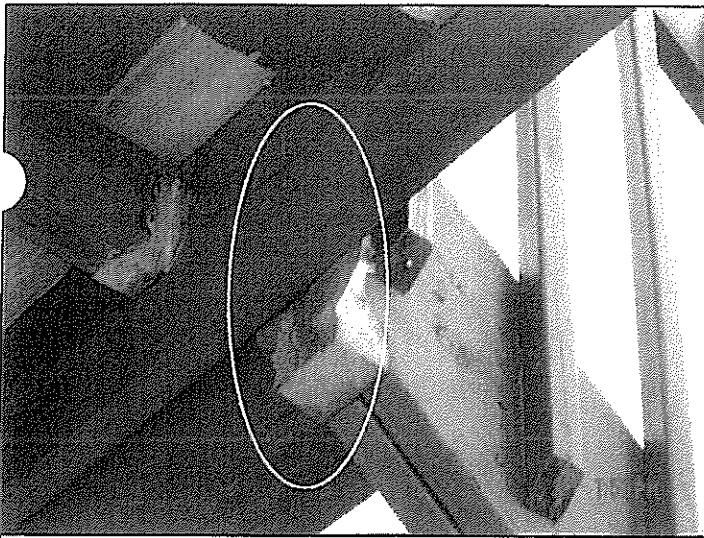
Picture 10 – Facing west. Typical balusters greater than 4" apart.



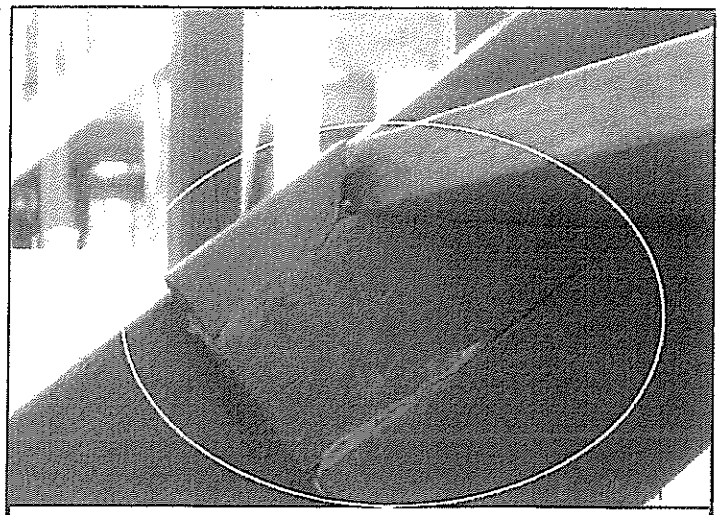
Picture 11 – Facing west. Main wood column for elevated deck not plumb. Column is twisted.



Picture 12 – Facing west. Picture shows large gap between level at plumb and out of plumb column.



Picture 13 – Facing east. Stringer hanger not properly fastened to rim joist for elevated deck.



Picture 14– Facing west. Cleat stringer damaged and improperly fastened to main stringer causing unwanted damage.



Picture 15-- Facing north. Exterior vinyl siding removed to showing non exterior grade siding. Inspection hole reveals no insulation.

Client: [REDACTED]
Location: [REDACTED] Brooklyn, NY 11216
Subject: Residential home inspection
Date of Service: November 6, 2011

This inspection covers only the areas of the home where the owner has experienced problems. This home was constructed several years ago. No Certificate of Occupancy appears under the address for the Department of Buildings. This is unusual considering the home is occupied. The attached report outlines the finding with photos taken on the day of the inspection. Additionally, a copy of the Department of building website listing is also attached. The findings are not listed in order of importance. Please read this report carefully.

Exterior:

The following items were observed:

1. Several windows have not been installed correctly as evidenced by the inability to lock several units.
 - 1a. The upper sashes does not remain in their upright position. Forcing the sashes apart does not always yield the desired results.
 - 1b. The building plans provided show aluminum clad and vinyl clad units depending on schedule. All units appeared to be vinyl clad.
 - 1c. Although problems with several units were observed. Any and all defects can be corrected by removing the affected sash and correcting the alignment problem.

Structural:

The following items were observed:

1. The rear elevated deck and staircases are poorly constructed.
2. The east wood column is twisted and out of plumb. The attached pictures illustrate the degree of severity.
3. The cross braces for the wood columns are not properly fastened to the columns. Damage to the ends of the braces was observed. Additionally, the braces are in tension as evidenced by the slight bow mid span.
4. The railings are not properly fastened to the stringers. As a result, the railings are splayed outward.
5. The balusters are greater than 4" apart throughout all the railings and hand grabs.
6. The joist hangers for the stringers are not properly fastened. The lower section of the hanger is not properly attached to the rim joist for the elevated deck.
7. Several of the treads appear to have been installed upside down as evidenced by the position of the crown. This condition prevents proper drainage. As a result, several treads are bowed and buckled.
8. The stringer cleat is improperly fastened to the main stringer for the staircase. As a result, several sections of the stringer cleat are split and damaged.
9. Repairing the supports for the deck and staircase may not be as effective as a complete replacement that adheres to proper construction practices.

Certificate of Occupancy:

1. The present owner stated that he has not yet obtained a Certificate of Occupancy from the Department of Buildings.

1a. A visit to the Department of Buildings website confirmed that a Certificate of Occupancy for this address is not available. No outstanding violations were observed. Further investigation is required.

Plumbing and Sewer Line:

1. The main sewer line appears to be constructed using PVC instead of cast iron as specified in the building plans.

1a. The present owner stated that there were problems with the main sewer line before the pitch of the line was corrected. The owner stated that he contracted a plumber to inspect the line to determine the cause of sewer backups. The contractor was able to determine that the sewer line was not properly pitched to the main sewer line in the street. Corrective action was taken and the problem was solved.

1b. The present owner should be able to provide invoices and work orders from plumber and the contractor regarding this corrective action.

Central Heating Unit and Distribution:

1. The building plans specify the make and model number for the central heating unit as a Weil McClain MEA#159-75-E, model EG-45. This model has an input rating of 150,000 Btu/hour and an IBR of 106,000 Btu/hour. The actual unit is a New York Boiler unit with an input rating of 130,000 Btu/hour and an IBR of 94,000 Btu/hour.

1a. These are not equivalent units in size and output. The unit presently in operation is significantly smaller than the unit specified.

1b. The present owner states that the basement level remains cool regardless of thermostat setting on the main level.

1c. As a result of this system imbalance the owner was able to have the heating contractor install a separate thermostat for the basement but this has not solved the problem since the main and second levels continue to overheat.

1d. There is only one circulator for this hydronic system. Therefore, there is only one zone for the entire building. Installing zone valves does not necessarily solve imbalance problems with heating systems. The placement and size of radiators, the size of the central heating unit, the overall distribution, insulation factors and the proper operation of the unit determine if the building receives adequate heating.

1e. The present distribution overheats floors 2 and 3. The heating system is not sized in accordance with the specifications for the building plans.

1f. The output of the actual unit has a net output rating of 94,000 Btu/hour. Considering the three floors, total surface area and the configuration of the distribution, it appears that the system is imbalanced. Only individual zones with separate thermostats and circulators can provide a balanced system.

1g. The installation of balancing valves may provide some improvement.

Hot Water Heater:

1. The hot water heater specified in the building plans call for a 75 gallon capacity unit. The actual unit is rated for only 50 gallons.

2. At the time of the inspection, the hot water heater constantly cycled indicating that it was undersized for the level of demand.

Disclaimer:

All the equipment and the appliances which were tested to have been tested, with respect for electrical and mechanical operation only. No judgement is offered or implied as to the quality or the effectiveness of operation of those items under normal conditions. Those appliances which are considered as portable, and not part of the real property were not tested.

This inspection is limited to only those structures, facilities, etc. that are accessible and visible. This report provides recommendations and is limited to those recommendations. Since internal wiring, conduits, pipes, etc. are not accessible for inspection, they cannot be commented upon in this report. This report does not include nor does it make representation or indication as to any portion of the house not actually seen nor capable of being seen. This report represents conditions existing on the day of inspection only, and is not to be construed as a guarantee or warranty of any kind. This report is also not intended for the purpose of appraising the value and property or fixing a value on it. The security, peace, and property of the present owner cannot be jeopardized in any way during this inspection.

Scope of This Inspection

The scope of this inspection is limited to a visual inspection of the general systems and components of the home to identify any system or component listed in the report which may be in need of immediate major repair.

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- Asbestos, radon, formaldehyde, lead water or air quality.
- Electromagnetic radiation or any environmental hazards.
- Building value appraisal or cost estimates.
- Condition of detached buildings.
- Pools, spas or underground piping.
- Specific components noted as being excluded on the individual system inspection forms.
- Private water or private sewer systems.
- Saunas, steam baths or fixtures and equipment.
- Radio controlled devices, automatic gates, lifts, elevators, dumbwaiters and thermostatic or time clock controls.
- Water softener/purifier systems or pool heating systems.
- Fireplace heat exchangers, face obtaining appliances, security alarms and personal property.
- Adequacy or efficiency of any system or component.
- Prediction of life expectancy of any item.

Arbitration:

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Use By Other

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Attorney's Fees

The prevailing party in any dispute arising out of this agreement, the inspection, the reports shall be awarded all Attorney's fees, arbitrator and other costs.

Severability

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Disputes

The client agrees that any claim for failure to accurately report the visually discernible conditions at the subject property, as limited herein above, shall be made in writing and reported to the inspector within ten business days of discovery. Client further agrees that, with the exception of emergency conditions, client or client's agents, employees, or independent contractors, will make no alterations, modifications or repairs to the claimed discrepancy prior to the reinspection by the inspector. Client understands and agrees that any failure to notify the inspector as stated above will constitute a waiver of any and all claims for the said failure to accurately report the condition in question.

Limitation on Liability

The inspector's liability for mistakes and omissions in this inspection report is limited to the refund of the fee paid for the inspection and the report. The liability of the inspector's principals, agents and employees is also limited to the fee paid. This limitation applies to anyone who is engaged or has to pay expenses of any kind because of mistakes or omissions in the inspection and the report. This liability limitation is binding on client and client spouses, heirs, principals, agents and anyone else who otherwise may claim through the client. The client assumes all losses greater than the fee paid for the inspection. The client agrees to immediately accept a refund of the fee as full settlement of any and all claims which may ever arise from this inspection and report.

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HOMEOWNER TESTIMONIALS

Caleb Watson

954 Liberty Avenue Brooklyn, NY 11208

I'm no carpenter but I'm not blind. After the third time the water came pouring through the ceiling in the kitchen I called the developer, and he hung up on me. He said, "It's not my problem" and hung up. But I was nervous, because it was coming through the lighting fixtures, and that is a fire hazard. This home is where I am going to retire – I don't want to be dealing with all of these problems month after month, year after year. The walls aren't even straight, and the cement stairs are coming apart in the back.

When we first moved in we couldn't get any heat, the whole block of us. People were really frustrated, and COLD! Finally the DOB came and inspected and discovered the problem. The pipes are all too small. Instead of being $\frac{3}{4}$ inch they are only $\frac{1}{2}$ - So I'm thinking "Oh good – the city found the problem." Since they are HPD sponsored houses I figured they would fix it – they must have just overlooked it somehow. Boy was I wrong – what did we get? A violation and a fine! I don't understand how the city can approve something for the developer, and then fine the homeowner. Does that make sense? I guess I believed the government had my best interests in mind. My heating bills are about \$800 a month, I work as a bus mechanic for the MTA, and let me tell you – I feel that chunk every month.

Emanuel Gatewood

They lied! They looked me straight in the eye, in front of a room full of other homeowners, and they lied. The basements were flooded during and after the construction, and we're not talking water, we're talking sewage. Coming home to a waist high lake of raw sewage was not part of my image of the American Dream. It's pretty ironic, my house was built by the developer "Great American." Is it American to sell someone a faulty product and take no responsibility for its defects? It's fraud – and HPD is complicit in a mass fraud being perpetuated by developers on the backs of hard working New Yorkers like myself and my neighbors. It took two years to get anyone to do anything about it, and did they fix it? No, they put a band-aid on a gaping hole, and said we should be happy they did anything. Instead of fixing the sewers which were never laid right in the first place, they gave us pumps, which have to be replaced – an additional cost every year. Affordable homes should be just that, affordable to the homeowner. Saddling people with limited incomes to unending hidden costs while the Developers line their pockets and rip off workers...there is nothing great or American about it. Using tax incentives earmarked for the creation of good jobs and quality housing is the promise – HPD, what's with the lies?

Vivienne

Welcome Home? All I dreamt of was coming in to my own home after a long day of work and breathing a sigh of relief. Instead it had been nothing but constant anxiety. There was water in the basement the first week, the roof began leaking right away, and even after numerous patches and even two re-roofings the water still comes in – sometimes I don't even know why I bother repainting.

And the heat...what heat? I had to put in all new thermostats, add heaters to large spaces where there were no units, the air and water leaked so much through the windows I finally took out a loan to redo them all. I can't go away for a weekend because I am too afraid of what might fall apart while I am gone. I have spent \$70,000 trying to fix problems and make the house livable, but my heating bills are still about \$800 a month.

First Time Chinese-immigrant HPD homeowner

I call 311 – They say, "You call HPD. Here is the number." I say I want Chinese translator so I can understand. I call nine times, they just say you call HPD. I say can you find a translator for me, she says "No."

We call HPD, we have no one in between. We leave messages, Lenny Seif, Lenny Seif, no one helps.

Then HPD says call Company Contractor, Delight – we cannot call there is no one in the office. The Delight company, the secretary cannot answer anything, they can't answer anything. I understand, cause they're scared.

Delight says they buy the material just to last five years, after five you have to change, buy new things. I ask why, so he say, "Because you buy a cheaper house."

OK – I say. When I was in China, I know the house the city constructs everything they make to last 100 years. You just say five years, why when I buy the house you didn't tell us before you guarantee the house for just five years. Maybe we wouldn't buy the house.

But it didn't take five years - First year is a leak, the problem still five years from when we just come in, still the big problem, still the old problem. That's why I said we really have a headache. We talk like a joke. When we talk, my co-workers laugh – they say you bought a "brand new house" ha ha ha - but they don't know how hard it is for us For my family you know.

My neighbors – they are young, young buyers, even though they have problems they can fix the problems, they can keep the house. But we are seniors, and my son is retarded. We have no ability to convey these things. And we cannot keep longer to stay here with problems. We cannot rent. When we rent, the people get the water damages things, they want to be paid. The leak, like in my kitchen, it can't stop. Brand new – so we change the faucet.

Even though I rent for some money, I have to fix things. That costs more, that's big money – that's big headache.

**Carmen Kerr testimonial via Justice 4 Homeowners
Shakespeare Ave, Bronx NY**

"I want a real house, not a toy house," says school teacher Carmen Kerr about her home she bought from HPD in the Bronx. "It's nothing but problems. Those developers should come and live here for a while, see how they like it." And it's not the neighborhood she's complaining about, it's the house. On the day I went to visit Ms. Kerr brought me upstairs to see the ceiling over her bed. Water damage was visible along the entire length of the ceiling. "This is the sixth time I've had this fixed, sixth time." Today it cost her another \$250.00. But no one has come to repair the damage to the inside of the home, caused by the faulty roof in the first place. She has also shelled out money to pay for a boiler which lit on fire due to a faulty wiring job, new doors on the front and back of the house which workers struggled to install due to improper framing from the outset. "Every time I ask for copies of the warranties they make up some excuse or another. I had to threaten to sue them just to get them to come out and fix the leaks."

She pulls down a rickety ladder from the ceiling in the hallway and I follow her up to the attic crawl space. There she points out the pots, pans, and plastics laid out to catch the leaks. In the far edges of the rafters she shows me the insulation she had put in- part of an effort to keep the house from being so cold.

Since 2005 she has had to repair or replace 2 boilers, pay plumbers to come and trace leaks cause by mislaid or faulty plumbing, and do battle with an uncaring and unresponsive builder. Some lottery winnings!

Affordable Bushwick homes' fate uncertain in wake of HPD scandal

BY HENRICK KAROLISZYN AND GREG B. SMITH
Monday, October 10, 2011

Days after the FBI broke open a corruption scandal at the city agency that builds affordable housing, officials are trying to see if the fallout will hurt families looking to move in.

That question hangs over eight two- and three-story homes built by indicted developer Sergio Benitez in Bushwick, Brooklyn.

The city had seized the properties for nonpayment of taxes years ago and sold them to Benitez in June 2008 for \$1 each. He was supposed to build housing for families who made no more than 165% of the median income for the area.

Early Thursday, Benitez, five other developers and Wendell Walters, an acting commissioner for the Housing Preservation and Development Department, were arrested on corruption charges.

Prosecutors say Walters pocketed \$600,000 in cash bribes - some of it stuffed into golf-ball boxes and coffee cups - from Benitez and other developers seeking HPD work.

The 41-page indictment says Benitez paid kickbacks but also took them from a contractor who wanted work from Benitez's HPD projects. That contractor, identified only as John Doe No. 1, cooperated with the FBI and secretly recorded conversations.

After the indictment was unsealed, HPD Commissioner Mathew Wambua said the agency had disqualified Benitez and the other developers from future business with the agency.

Benitez, who didn't return calls, claims to have worked on 80 HPD buildings over the years and is featured in an HPD brochure touting the city's effort to increase available affordable housing.

"I'm originally from Brooklyn and I see my work as a way of giving back," Benitez says in the brochure. "I'm glad my work with HPD translates into good, safe housing for the residents and the neighborhood at large."

Some of that housing may be in limbo. Last week, HPD officials said they were reviewing their records to see if any of the indicted contractors or developers had ongoing projects with the agency.

They found one called the Palmetto Cluster the eight homes in Bushwick that the city sold to Benitez in 2008.

As of last week, construction on the beige-sided homes was complete, but only a few of the units had been sold.

"We consider it an open project because not all of the units are sold, so we're considering our legal options," HPD spokeswoman Catie Marshall said.

On Friday, five of the eight properties had signs in their windows reading: "For Sale - First Time Homebuyer 5% Down Payment HPD Program."

The telephone number on the brochure was for Benitez's Bushwick Properties. A voice-mail recording said: "Hi, this is Sergio. Please leave a name and number and I'll get back to you."

WORKERS

The problem of worker exploitation on HPD jobsites reported in 2007 continues to persist today. On every HPD jobsite we visited since reopening our investigation we observed off-the-books work or safety concerns. Over 300 workers have told us their stories of exploitation. We have assisted workers to file 157 wage violation claims. Most of these violations stem from contractors evading the federally mandated prevailing wage requirement on jobsites. Common methods we have observed contractors using to evade wage requirements include paying workers cash off the books, under reporting worker hours, and forcing workers to pay kickbacks.

One of the most egregious examples of labor law infractions we uncovered was at Lettire Construction's Metro North project in Harlem. The project was originally lauded as the first housing project to receive ARRA stimulus funding. Following an investigation of 23 of Lettire's subcontractors on the jobsite, the US DOL found 16 were in violation of either prevailing wage or overtime laws, or both. Approximately 290 employees on the jobsite were due a total of about \$1.4 million in backwages. Additionally, the investigation found that Lettire Construction failed to adequately monitor its lower tier subcontractors to ensure compliance with wage requirements. The US DOL is seeking to debar Lettire and several of its subcontractors. One subcontractor, Sant-Tec Electric, and its principal have already been debarred from federal work. We witnessed Sant-Tec employees loaded into a van and driven to a bank, where they were forced to cash their paychecks and immediately pay a kickback.

Workers from 780 Prospect Avenue in the Bronx filed wage violation claims with the US DOL. One worker being paid \$12 an hour (or about 20% of the legally required wage) was ordered to hide from HPD inspectors. Still other workers reported getting paid in cash off the books. Most of the workers went without basic safety equipment like hardhats. Until workers are paid, HPD is withholding \$575,000 in funds from the project's general contractor, Great American Construction. On a separate project awarded to Great American in April 2010, HPD has halted the redevelopment process until the 780 Prospect Avenue wage investigation is complete. Local groups had previously and unsuccessfully attempted to reverse the award of work to Great American, citing an opaque selection process and preferential treatment of Great American during the bidding.

In this section we will provide evidence that further elaborates on wages violations on HPD jobsites as well as safety concerns. We have included news articles and US DOL press releases regarding the two projects described above. We have also included testimony given by an HPD construction worker on February 14, 2008 at a New York City public hearing. This testimony describes the unsafe jobsite conditions and exploitation of workers at 1125 Putnam Avenue, Brooklyn. We later discovered that this building was part of the Bleeker Street Cluster, a project developed by Sergio Beneitez who has since been indicted by the federal government for bribing HPD Assistant Commissioner Wendell Watlers.

The following is testimony an HPD worker gave at a public hearing on HPD funding on February 14, 2008. The jobsite he worked on, 1125 Putnam Avenue in Brooklyn, was developed by Sergio Benitez. In October 2011 Benitez was arrested for racketeering, bribery and fraud charges related to an illegal enterprise he helped perpetuate with HPD Assistant Commissioner Wendell Walters. The general contractor, Cheever Development, has worked with Benitez on several large projects. The principal of Cheever, Matthew Lonuzzi bought a private golf course and country club in 2010.

Testimony of an HPD worker at a public hearing on HPD funding
February 14, 2008

On August 9th I went to a Cheever job at 464 Bushwick Ave in Brooklyn to find work. The contractor, on the job, told me to go the next day to their other site at 1125 Putnam. When I started working the boss told me he'd pay me \$70 cash per day including Saturdays. He told me not to worry about the money because he "carried cash at all time in his pocket." He also told me that he had 25 workers working for him on similar jobs in the area. I was hired off the street to work. I wasn't asked if I had any training, I wasn't asked for my full name and I didn't sign any paperwork.

I've been working in construction for 10 years on jobsites all over New York and New Jersey. I've worked for dozens of companies on many different types of jobs. When I started work at 1125 Putnam Ave I saw the most dangerous jobsite I'd ever been on. I was working on a loose wooden ladder with an unsecured jackhammer. There was no protection around the huge hole in the floor 2 feet from where the ladder I was working was perched. I took a picture that shows the hole and the ladder. I also took a picture of the scaffolding we worked on. The scaffolding consisted of a loose plank across sawhorses. None of the other workers had hardhats or wore goggles while jack hammering. We used an old frayed rope to pull block and sand up and down, sometimes the materials would fall down right next to the worker pulling them up. I was surprised by the work conditions and asked the other workers if this was normal. They told me that they'd worked for this contractor and other contractors doing work on similar jobs and that the safety conditions were all the same.

One worker had worked 2 years on Cheever jobs for \$80 per day. Another had worked for a year on the same sites for the same rate. I now know that all of those were prevailing wage HPD jobs and that none of us were being paid what was required by law. I know that this is a hearing about the high cost of affordable housing. I have the same question that all of you have. Why does it cost too much to build affordable housing in New York City, it is clear that the money is not going to pay the workers. The company I worked for didn't withhold taxes, I was paid cash off the books with no benefits. The workers I spoke to had been doing work on this and other HPD projects for years. They all had the same story cash, off the books, regardless of whether the jobs were prevailing wage or not.

I'm lucky I have papers but the guys I worked with on that site were not so lucky. They live and work in a world here they are afraid to stand up for their basic right to a safe workplace and their right to be paid the legally required wage. This system is cheating workers like me and this system is cheating taxpayers who fund these projects. I know that the bosses on these jobs have expensive cars and I know that the workers on these jobs can't afford to buy lunch. I know that when one of the workers hurt his back he was told to go to the emergency room. This taxpayer funded jobsite didn't offer the workers any medical benefits. I know we have to keep costs down but I don't see how workers getting paid off the books and using publicly funded hospitals is going to do that.

Feds, HPD eye projects in Brooklyn, the Bronx after workers claim illegal labor

BY DANIEL BEEKMAN

DAILY NEWS WRITER

Sunday, October 23 2011, 4:00 AM

Illegal labor is the foundation of the city's affordable housing industry, construction workers and union leaders claim.

Mayor Bloomberg has vowed to build and preserve 165,000 units of affordable housing by 2015. But Hizzoner's push is coming under scrutiny, with a top contractor headed to trial for wage infractions at an East Harlem project and a housing agency bigwig arrested Oct. 6 for corruption.

Now the U.S. Labor Department and the city Department of Housing Preservation and Development are probing underpayment and kickbacks at affordable housing projects in the Bronx and Brooklyn, the Daily News has learned. At the Bronx site - 780 Prospect Ave. - workers are due \$575,000.

"The problems at HPD are systemic," said Robert Bonanza, business manager of the Mason Tenders District Council. "For years, workers have been coming forward with stories about being forced to pay kickbacks, being paid in cash and working under unsafe conditions."

HPD is also investigating labor violations at 97 Crooke Ave. in Prospect Park South, Brooklyn. But spokesman Eric Bederman insists the agency can clean its own house.

"Our proactive monitoring and oversight were responsible for identifying the problems," he said. "We have recently added provisions to our development documents specifically tightening developer and general contractor monitoring obligations."

The Bronx apartment building opened with fanfare on Oct. 7 to low-income seniors and the homeless. The project was subject to prevailing wage requirements because it received federal funds.

But Victor Zuniga, 37, who mixed cement at 780 Prospect Ave., claims he was paid \$12 per hour, not \$57 as required by law.

The Mexican immigrant also claims he paid kickbacks to a subcontractor at the site, Brooklyn-based Bayport Construction. He and other non-union workers say the affordable housing industry is rife with payment scams.

"I felt bad because I was working hard," the Bronx resident said through an interpreter. "But I'm the only one that supports my household and I needed the job."

HPD is withholding \$575,000 from Queens-based general contractor Great American Construction until it pays the workers.

Zuniga says he spent weeks working off the books and was ordered to hide from HPD inspectors. Carlos Torres, another worker at the site, claims he received \$100 per day under the table, adding that many laborers worked without hardhats and gloves.

Lettire Construction, a top HPD general contractor, will go to court in January for charged with underpayment at an East Harlem project that was the first in the nation to receive federal stimulus money. In 2009, the feds cited 16 Lettire subcontractors, awarding 290 workers \$1.4 million in back pay.

Meanwhile, Wendell Walters, an HPD assistant commissioner, has been indicted for allegedly taking bribes from affordable housing developers and contractors. Bayport and Great American did not respond to requests for comment.

Bonanza, of the Mason Tenders, called the scandal "just the tip of the iceberg."

Torres, 36, said many exploited workers are illegal immigrants who are scared to speak out.

"The situation is really bad," said the Puerto Rico native. "They don't care about the workers - just about money."

City halts \$32 million Brooklyn housing project due to investigation first reported by Daily News

Corruption allegations put Brooklyn redevelopment project on hold

ERIN DÜRKIN, DANIEL BEEKMAN
Thursday, December 01, 2011

The city has put a \$32 million Brooklyn housing project on hold due to corruption charges uncovered by the Daily News.

The Department of Housing Preservation and Development has halted the redevelopment of the defunct Greenpoint Hospital while the agency and the U.S. Department of Labor investigate alleged underpayment and kickbacks at an HPD site in the Bronx.

The Greenpoint project has the same Queens-based contractor as the Bronx site being probed.

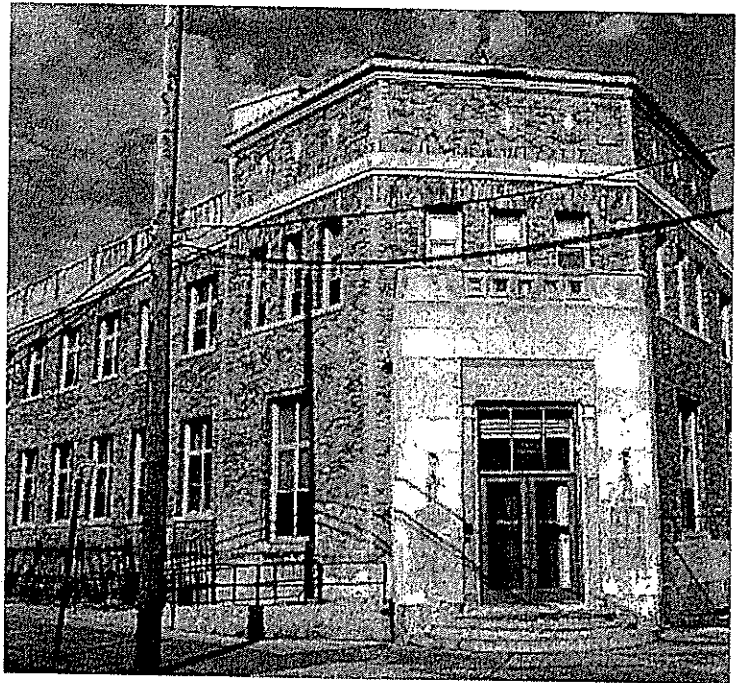
Great American Construction won the contract last year to convert the former hospital into 240 units of affordable housing, beating out two other bidders, including a local nonprofit.

Now HPD won't let the project go forward until the Bronx probes are complete, a spokeswoman said. The agency is withholding \$575,000 from Great American for the Bronx project, a housing development on Prospect Ave.

The News exposed the investigations in October after workers and labor leaders spoke out.

"The problems at HPD are systemic," said Robert Bonanza, business manager for the Mason Tenders District Council. "Its relationship with Great American Construction is just one example of the corruption that exists."

HPD announced its Greenpoint Hospital redevelopment plan in April 2010, but Great American never broke ground because losing bidder Greenpoint Renaissance Enterprise Corporation sued the city for steering the job to Great American. The lawsuit was later thrown out, but GREC is now urging HPD to boot Great American due to the Prospect Ave. investigations.



Defunct Greenpoint Hospital in Brooklyn, where an affordable housing project has been halted pending a corruption investigation.

"You have these guys being pursued for illegal work in the Bronx," said Jan Peterson, GREC chairwoman. "That should be enough to drop them...Treat the community with some fairness."

Great American is denying any role in wage infractions at the Bronx site, claiming that masonry subcontractor Bayport Construction is the probe's only target.

"Great American has never been under investigation by the Department of Labor," said president Samuel Gaccione, insisting that HPD has not halted work at other Great American projects.

HPD refused to answer questions about how agency bigwig Wendell Walters was involved in the Greenpoint deal. He was busted in October for taking \$600,000 in bribes from developers.

The project was part of the affordable housing the city pledged to build in return for rezoning the Brooklyn waterfront for luxury towers - but almost none of it has been delivered. Political wrangling has delayed the hospital project for more than four years.

November 30, 2011

Hospital stay! The city halts redevelopment of former medical center in Williamsburg

BY AARON SHORT

The city has halted the redevelopment of the long-defunct Greenpoint Hospital after the project's subcontractor was charged with underpaying workers at another site in the Bronx.

"We are taking the allegations very seriously," said Eric Bederman, a spokesman for the Department of Housing Preservation and Development. "When that investigation is complete, we will consider its findings in determining whether to continue negotiations with [the developer]."

Last April, Queens-based Great American Construction fended off three rivals to win the contract to convert the former hospital site on Maspeth and Kingsland avenues into 240 units of below-market-rate housing.

But one of the losing bidders sued the city in February for "unfairly" awarding development rights of the \$52-million project to the outer-borough company.

And last month, federal agents arrested Wendell Walters, a key city housing official who helped steer the contract to Great American, for allegedly accepting \$600,000 in unrelated bribes from a handful of developers.

Two weeks later, the city and the US Department of Labor launched an investigation into Great American's subcontractor, Bayport Construction, after several of its construction workers complained the developer underpaid them nearly 20 percent of hourly wages owed for work at a city-owned Bronx site, according to the Daily News.

In response, the city is withholding \$575,000 in funding to Great American pending the outcome of those investigations.

Great American's Samuel Gaccione said the project is "at a standstill" because of the litigation, but was confident he would be breaking ground soon.

"We're still looking forward to developing affordable housing in Greenpoint," said Gaccione.

But neighborhood residents say the scandal should disqualify Great American from developing the site.

"The city needs to back down from this bad decision," said Jan Peterson of the Greenpoint Renaissance Enterprise Coalition, a losing bidder. "This whole thing is just a travesty. This is the kind of things that cause whole communities to have a lack of faith in the public sector and the private sector."

Contractors hired goons to issue death threats, beat and throw acid at workers who fought kickbacks

The violence allegedly began in 2006

BY BRIAN KATES
NEW YORK DAILY NEWS
Friday, October 28 2011, 5:01 PM

Contractors working on a \$13-million Brooklyn affordable housing project paid thugs to throw acid and beat workers who blew the whistle on a kickback scheme that led to the indictment of a top city official, court papers show.

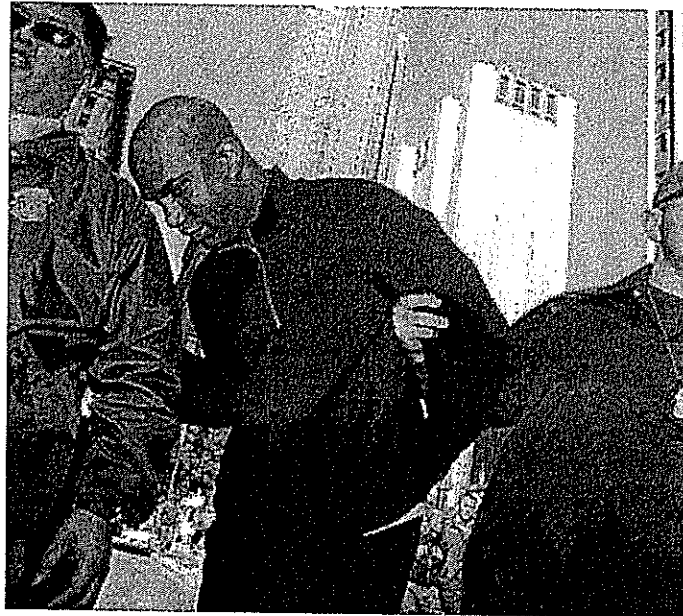
The contractors worked for Bogdan Starzecki, head of MCR Restoration Corp., whom sources identified as a witness against Assistant Housing Commissioner Wendell Walters.

Walters, a key official in the Housing Preservation and Development department's affordable housing program, was charged Oct. 6 with pocketing \$600,000 in bribes from developers and contractors, including Starzecki, since 2002.

Sources close to the case confirmed that the witness identified only as John Doe No. 1 in the indictment is Starzecki. He has signed a cooperation agreement.

The case sheds a spotlight on systemic graft in the Bloomberg administration's much-touted push to create 165,000 affordable housing units by 2015.

The investigation that led to Walters' indictment began in 2008 with an FBI probe of kickbacks and violence at the \$13 million Watkins Avenue Cluster in Greenpoint, one of the HPD-funded affordable housing developments Starzecki allegedly bribed his way into, sources said.



Assistant Housing Commissioner Wendell Walters was arrested for accepting \$600,000 in bribes.

Starzecki, his subcontractor Jozef Wolosz and confessed acid-thrower Dariusz Lapinski pleaded guilty this year to various charges in that case.

The violence began in 2006 after 11 hardhats sued Starzecki and Wolosz, owner of Keystone Renovations Corp., charging they were forced to kick back wages to keep their jobs.

Enraged that the suit could expose their deal with Walters, Starzecki and Wolosz retaliated with death threats - and by throwing acid on a worker's girlfriend.

The suit was settled in 2008, but the violence continued.

"Give them a f-----g beating. ... Those people who f-----g did this to me, I will f-----g get them one by one," a Keystone operative told a hired thug in a secretly recorded phone call.

The feds moved in before the attacks could be carried out.

Starzecki did not return a call seeking comment. Lawyers for Wolosz and Lapinski did not return calls.

Feds probe workers underpaid at E. Harlem stimulus sites

BY BRIAN KATES
DAILY NEWS STAFF WRITER

Sunday, November 08, 2009

The nation's first housing development to start construction with federal stimulus money is under investigation for cheating workers out of wages, the Daily News has learned.

In August, Mayor Bloomberg, Gov. Paterson and a gaggle of local politicians stood on an empty lot on E. 102nd St. to announce the city was converting nearly \$60 million in federal stimulus money into 739 affordable homes.

Bloomberg said 2,800 "well-paying jobs" would be created at four projects in East Harlem, central Harlem and East New York, Brooklyn - the first to be built with stimulus dollars.

To receive taxpayer subsidies, the developers agreed to pay workers based on prevailing rates of unionized employees doing the same work.

Since then, the U.S. Labor Department and the city department of Housing Preservation and Development have launched separate investigations into allegations that workers at the East Harlem jobs were paid far less than required by stimulus-funding rules.

No allegations of wage scams have surfaced at the central Harlem and Brooklyn sites.

The East Harlem developments - 259 apartments on E. 102nd and E. 103rd Sts. called Hobbs Court and 81 units on E. 100th St. called The Cien - got \$26 million from the stimulus act's Tax Credit Assistance Program.

Some workers on these projects claim they were cheated through a variety of scams.

In one scheme, they say contractors deliberately misclassified workers' job descriptions on payroll records so they could pay them much less than required.

Labor Department investigators have questioned multiple workers at the East Harlem sites and are reviewing payroll records to determine if laws have been broken, a source familiar with the case said.

The city housing agency has joined the federal probe, HPD spokesman Eric Bederman said.

Bederman said the agency first heard allegations of wage underpayment in August. In September, the agency issued a reminder to contractors that they must pay prevailing wages on stimulus-funded projects.

"We are working to address this issue," he said.

In 2007, the city used competitive bidding to pick the developers of the Harlem sites: the nonprofit Phipps Houses and the for-profit Urban Builders Collaborative.

The general contractor on the job, Lettire Construction Corp., has built numerous affordable units in the city and has "over \$100 million in the current construction pipeline," its Web site proclaims.



UNITED STATES DEPARTMENT OF LABOR

News Release

WHD News Release: [12/07/2010]

Contact Name: John M. Chavez

Phone Number: (607) 565-2075

Release Number: 10-1490-NEW

US Labor Department recovers nearly \$339,000 in back wages and debars electrical subcontractor for work on New York City publicly-funded housing projects

NEW YORK — The U.S. Department of Labor has recovered nearly \$339,000 in back wages for 27 workers employed as electrical mechanics by Sant-Tec Electric Inc., a company incorporated in both New York and New Jersey.

An investigation by the Labor Department's Wage and Hour Division revealed that the company and its officials had violated wage and benefit requirements of the Davis-Bacon and Related Acts and the Contract Work Hours and Safety Standards Act on three federally-funded housing construction projects in New York City.

In addition to paying the back wages, Sant-Tec Electric, President Manuel Montesino and Human Resources Manager Olga Pena will be debarred from working on future federally-funded contracts for a period of three years.

"Workers employed on federally-funded projects must be paid proper wages and fringe benefits," said Maria Rosado, the New York district director for the Wage and Hour Division. "Contractors and subcontractors working on such projects should know that the Labor Department will pursue them if they don't pay their employees properly under the law."

The investigation by the Wage and Hour Division's New York City District Office determined that Sant-Tec failed to pay the prevailing wage rates and fringe benefits to some of its employees, failed to pay some of its employees for all hours worked, failed to pay its employees overtime for hours worked over 40 in a week and submitted certified payroll records that did not accurately reflect all the hours worked by employees on the project.

Sant-Tec was a subcontractor to Lettire Construction Corp., which itself was a subcontractor on three contracts awarded by the New York City Department of Housing Preservation and Development for the

following housing projects: The Claremont Project, 1421 College Ave., Bronx, N.Y. — prime contractor Claremont Park Associates LP; Fortune Society Project, W. 140 St., New York, N.Y. — prime contractor 625 W. 140 St. LP c/o Fortune W. 140 St. GP Inc.; and the Metro North Project, 306-324 E. 100 St., New York, N.Y. — prime contractor Hobbs Ciena Associates LP and Hobbs Ciena Housing Development Fund Corp.

The Metro North Project was funded in part by the American Recovery and Reinvestment Act. The first two projects were subject to the Cranston-Gonzalez National Affordable Housing Act of 1994. This law incorporates the provisions of the Davis-Bacon Act, which requires the payment of prevailing wages and benefits to laborers and mechanics employed on federal and certain federally-funded projects. The Contract Work Hours and Safety Standards Act, covering all three projects, requires contractors and subcontractors to pay laborers and mechanics on the projects one and one-half times their basic rate of pay for all hours worked over 40 in a week.



UNITED STATES DEPARTMENT OF LABOR

News Release

U.S. Department of Labor
Wage and Hour Division

Release Number: 10-1597-NEW / BOS 2010-503

US Labor Department seeks to recover back wages, proposes debarment of construction contractor for labor violations at New York City publicly-funded housing project

NEW YORK -- The U.S. Department of Labor has taken legal action to recover \$12,680 in back wages for 12 employees of C.J.L. Construction Inc., based in the Bronx, who were working on a public housing project funded in part by the American Recovery and Reinvestment Act of 2009.

An investigation by the Labor Department's Wage and Hour Division revealed that the company and its officials had violated wage, classification and other requirements of the Davis-Bacon Act on the federally funded Ciena Project, located at 30-324 E. 100 St. in Manhattan, which is part of the Metro North Rehabilitation Redevelopment Program.

In filing an order of reference with the department's Office of Administrative Law Judges, the Labor Department is seeking not only full restitution of all back wages due employees but also the debarment of C.J.L. Construction Inc., president Joaquim Moreira and manager Marco Ferreira to prevent them from working on future federally-funded contracts for a period of up to three years.

"On this project, C.J.L. misclassified cement mason finishers as cement/laborer workers and failed to pay them proper prevailing wages," said Maria Rosado, the New York district director for the Wage and Hour Division. "In addition, the company failed to pay employees for all the hours they worked, failed to maintain required records of their employment, and submitted falsified statements of compliance and falsified certified payrolls. Needless to say, such flagrant violations of the law will not be tolerated."

C.J.L. was a subcontractor to Lettire Construction Corp., which itself was a subcontractor on the contract awarded by the New York City Department of Housing Preservation and Development to prime contractors Hobbs Ciena Associates L.P. and Hobbs Ciena Housing Development Fund Corp.

This investigation was conducted by the New York City District Office of the Labor Department's Wage and Hour Division. The back wages found due to the workers were determined according to the

requirements of the Davis-Bacon Act, which requires all contractors and subcontractors performing work on federal and certain federally-funded projects to pay their laborers and mechanics the proper prevailing wage rates and fringe benefits as determined by the secretary of labor.

For more information on the Davis-Bacon Act and other federal laws administered by the Wage and Hour Division, call the division's toll-free helpline at 866-4US-WAGE (487-9243). Information is also available at <http://www.dol.gov/whd>.



UNITED STATES DEPARTMENT OF LABOR

News Release

WHD News Release: [03/03/2011]

Release Number: 11-312-NEW / BOS 2011-075

US Labor Department seeks debarment of construction contractor for labor violations at New York City publicly funded housing projects

NEW YORK — The U.S. Department of Labor has taken legal action to seek debarment of Lettire Construction Corp., a New York City general contractor, and Nicholas Lettire, president of the company, from working on future federally funded contracts for a period of three years.

An investigation by the Labor Department's Wage and Hour Division revealed that the company and its officials had willfully violated wage, benefit, certified payroll and other requirements while working on the federally funded Ciena Project on East 100th Street, as well as the Hobbs Court Project on 102nd Street, both in Manhattan. Both projects are part of the Metro North Rehabilitation Redevelopment Program and are funded in part by the American Recovery and Reinvestment Act of 2009. Consequently, both projects are subject to the wage and benefit requirements of the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act.

"The department will not hesitate to pursue legal action, including debarment, to ensure employees working on federally funded projects are properly paid under the law," said Secretary of Labor Hilda L. Solis.

The investigation found that Lettire Construction had failed to adequately monitor its lower tier subcontractors to ensure their compliance with prevailing wage and overtime requirements. Following an investigation of 23 of the company's subcontractors, the Wage and Hour Division determined that 16 were in violation of either prevailing wage or overtime laws, or both. The investigation also found "under-bidding" by at least one second-tier subcontractor and that Lettire Construction failed to post required wage decisions at the worksite for employees to view. As a result of these violations, approximately 290 employees of these subcontractors were found to be due a total of about \$1.4 million in back wages.

In addition, the Wage and Hour Division's New York City District Office determined that Lettire Construction failed to pay required prevailing wage rates and fringe benefits to some of its employees, failed to pay some employees for all hours worked, and submitted certified payrolls that failed to reflect

all actual hours worked by employees on the project during some weeks. The company has now agreed to pay \$3,071 in back wages to four employees.

In filing an order of reference with the Labor Department's Office of Administrative Law Judges, the department is seeking the debarment of Lettire Construction and company president Nicholas Lettire to prevent them from bidding or working on future federally funded contracts for a period of three years.

The Davis-Bacon Act requires all contractors and subcontractors performing work on federal and certain federally funded projects to pay their laborers and mechanics the proper prevailing wage rates and fringe benefits as determined by the secretary of labor. In addition, the Contract Work Hours and Safety Standards Act requires contractors and subcontractors to pay laborers and mechanics one and one-half times their basic rate of pay for all hours worked over 40 in a week.

For more information on Davis-Bacon and other federal laws administered by the Wage and Hour Division, call the division's toll-free helpline at 866-4US-WAGE (487-9243). Information is also available at <http://www.dol.gov/whd>



UNITED STATES DEPARTMENT OF LABOR

News Release

WHD News Release: [12/13/2010]

Release Number: 10-1598-NEW

US Labor Department seeks more than \$829,000 in back wages, proposes debarment of 2 contractors for work on New York publicly-funded housing projects

NEW YORK — The U.S. Department of Labor has taken legal action to recover more than \$829,000 in back wages for 32 workers employed as demolition laborers by Enviro & Demo Masters Inc. and Gladiators Contracting Corp., construction demolition companies based in Brooklyn and Queens.

"The department will not hesitate to pursue legal action, including debarment, to ensure employees are properly paid under the law," said Secretary of Labor Hilda L. Solis.

An investigation by the Labor Department's Wage and Hour Division District Office in New York City revealed that the companies and their officials had violated wage and benefit requirements of the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act on two New York City public housing construction projects that were partially funded by the American Recovery and Reinvestment Act of 2009. The investigation found that the companies had failed to pay prevailing wage rates and fringe benefits to some employees, failed to pay employees time and one-half their basic rate of pay for hours worked over 40 in a week, and submitted inaccurate certified payroll and time records.

In filing an order of reference with the department's Office of Administrative Law Judges, the Labor Department is seeking not only full restitution of all back wages due to the employees but also the debarment of Enviro & Demo Masters Inc.; Gladiators Contracting Corp.; the owner and president of both companies, Jover Naranjo; and Luperio Naranjo from working on future federally-funded contracts for a period of up to three years.

Enviro & Demo Masters and Gladiators Contracting were subcontractors to Lettire Construction Corp., which itself was a subcontractor on two contracts awarded by the New York City Department of Housing Preservation and Development for the following housing projects: The Ciena Project located at 30-324 E. 100 St. in Manhattan and Hobbs Court Project, located at 315 E. 102 St. in Manhattan. The prime contractors on these projects, which are part of the Metro North Rehabilitation Redevelopment Program, were Hobbs Ciena Associates LP and Hobbs Ciena Housing Development Fund Corp.

The Davis-Bacon Act requires all contractors and subcontractors performing work on federal and certain federally-funded projects to pay their laborers and mechanics the proper prevailing wage rates and fringe benefits as determined by the secretary of labor. In addition, the Contract Work Hours and Safety Standards Act requires contractors and subcontractors to pay laborers and mechanics one and one-half times their basic rate of pay for all hours worked over 40 in a week.

CORRUPTION

The Walters Indictment

HPD Assistant Commissioner Wendell Walters and six developers were arrested and indicted by the federal government in October 2011 for racketeering, bribery, money laundering and fraud. We believe that this indictment exposes only the tip of the iceberg of corrupting within HPD.

Walters is charged with accepting \$600,000 in bribes and kickbacks from developers and contractors seeking access to affordable housing programs. Walters allegedly summoned Bogdan Szarzecki, a general contractor and principal of MRC Restoration, to various locations around the City where he would write a number on a slip of paper indicating how many thousand dollars he wanted in exchange for general contracts. The bribery demands were usually for \$250,000; the general contracts were often in excess of \$10 million. Cash payments to Walters were hidden in golf ball boxes, overnight mail envelopes or rolled up in coffee cups. Walter's own home on historic Striver's Row is allegedly a bribe.

The indicted developers used a variety of schemes to conceal kickback payments from general contractors. Stevenson Dunn, one of the indicted developers, is a high school friend of Walters. Dunn's two partners, both lawyers, established a sham retainer agreement that developers used to launder kickbacks from contractors. The other developers in the indictment provided false and inflated invoices, which contractors were expected to pay. The developers then included these false invoices in requisition for payments submitted to HPD, thereby passing on the costs of corruption to the taxpayers.

Two contractors have already pled guilty to charges of racketeering conspiracy, bribery, wire fraud and money laundering. While unnamed in the indictment and FBI affidavit, Bogden Starzecki of MRC Restoration and George Armstrong of Metropolis Development were identified through public records.

During the time Starzecki was allegedly paying bribes (2004 to 2011), he was contractor on 53 Neighborhood Entrepreneur Program (NEP) buildings, or about one of every eight buildings completed under the program, and an additional 42 buildings built or renovated under other HPD programs. The entire investigation started when workers on MCR Restoration jobsites came forward with stories of being shaken down. In 2008, Starzecki eventually paid an undisclosed settlement with ten workers for underpaying wages.

Josef Wolosz, a subcontractor of Starzecki that that was forced to pay backwages in the 2008 settlement, was found guilty of continued harassment and intimidation of workers. He was convicted for obstruction of justice for hiring men to threaten laborers. The FBI recorded and transcribed Wolosz saying, "those people who ****ing did this to me, I will ****ing get them." Prosecutors further claim that Wolosz paid \$15,000 to have acid thrown in the face of one of the laborers' girlfriends.

One of these developers, George Armstrong, former head of the Housing Partnership Development Corporation, an affiliate of HPD. During the time Walters was directly responsible for NEP, Armstrong ran the Housing Partnership side of the program. According the FBI affidavit, Armstrong "worked closely with Walters... on several HPD real estate development projects" before he left the organization to start a private development company. In recent years, Armstrong was the contractor on 61 HPD projects, all

run through Walter's office. Nearly a third of those projects still lack certification that they are complete and legal to inhabit, even though construction on some began more than four years ago.¹

Other former HPD authorities have moved on to lucrative careers in the private affordable housing market. Former HPD Commissioner Raphael Cestero left the agency to take a job with L+M Development, one of the top HPD developers that has been awarded hundreds of millions of dollars in HPD work. Deborah Wright, another former HPD Commissioner, is now CEO of Carver Bank Corp. Carver Bank is one of eight lenders that participate in the Public Private Apartment Rehabilitation Program, an Economically Targeted Investment program that invests funds from public pensions to create affordable housing and good jobs.

The Boyland Indictment

The November 2011 indictment of NYS Assemblyman William Boyd for bribery and extortion provided further evidence that we have yet to see the full extent of corruption in HPD. Boyland was arrested for alleged seeking "a stream of bribes" for using his elected position to secure public approvals and funding for a carnival promoter and real estate scheme. Some of the grounds in the carnival scheme were controlled by HPD, an agency Boyland told the carnival promoter he had "locked up."² In a different recorded conversation included in a FBI affidavit Boyland states, "we got HPD... we're there."

In this section, we have provided a selection of court documents, government press releases and news publications to illustrate and corroborate our claims.

¹ The Wreckage: Fallout from Housing Official's Arrest Hit Vulnerable Neighborhoods and Workers, City Hall News. October 27, 2011.

² Assemblyman Again Face Bribe Charges, The Wall Street Journal.



HOME NEWS FEATURES DATE ISSUES SPOTLIGHT MORE ABOUT STATE

Fallout From Housing Official's Arrest Hits Vulnerable Neighborhoods

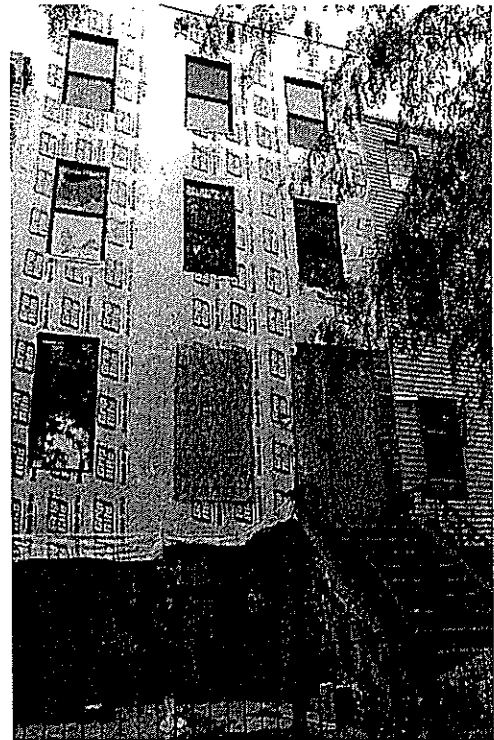
Alice Brennan for *The New York World* | October 27, 2011 10:10 AM

The arrest of a top New York City housing official may have exposed a network of fraud in Department of Housing Preservation and Development programs that took a toll on vulnerable Brooklyn neighborhoods, interviews and records suggest.

Wendell Walters, 49, appeared in federal court this week to face charges of bribery, corruption and fraud. He is alleged to have accepted at least \$600,000 in bribes and kickbacks from developers and contractors seeking access to affordable housing programs at HPD, where he served as an assistant commissioner.

When Walters and six developers and contractors who were connected with the programs he ran were arrested two weeks ago, HPD commissioner Mathew Wambua emphasized that the charges against Walters were exceptional. "I do not view the actions of this individual as representative of the great work the agency does, day-to-day, in carrying out the nation's largest municipal affordable housing plan," Wambua said in a statement.

Yet the prosecutors' case — which seeks to recoup \$22 million from the defendants — suggests that corruption infected numerous HPD programs Walters ran. One initiative overseen by Walters, called the Neighborhood Entrepreneurs Program, was once honored by Harvard's Kennedy School as one of the nation's best innovations in government.



Some buildings touched by the alleged bribery scheme now blight neighborhoods they were supposed to help revive. Neighbors say the house at 224 Spencer St. in Brooklyn has been in this state for more than a year. Alice Brennan/*The New York World*

Court transcripts show a subcontractor in one program run by Walters confessed to grossly underpaying workers on federally financed housing construction. Contractors purportedly billed HPD as if the workers were paid \$60 an hour, as required by federal law; instead, the workers received just \$12 or \$15 an hour for their labor. Prosecutors charge that Walters received more than \$400,000 in bribes over a six-year period from the contractor in charge of those jobs. (Walters earned \$135,000 salary in 2009 from HPD.) According to published reports, Walters awarded more than \$10 million in work to that contractor.

The impact of the alleged criminal activity is especially vivid on the streets of Bushwick and Bedford-Stuyvesant in Brooklyn, two low-income neighborhoods HPD programs sought to assist. Under HPD's HomeWorks program, overseen by Walters, developers were supposed to take vacant city-owned buildings and sell them to new homeowners. But in one of those projects – the three-story brick townhouse at 53 Rochester Ave. in Bushwick – thieves have torn through immaculately painted walls in search of copper and pipes to sell. Once-polished floorboards jut out dangerously, splintered and cracked.

"This building makes me feel sad," said neighbor Egon Hanson as he ran his hands over a dusty window sill at 53 Rochester Ave. "They spend all this money fixing it up, and now...it's a carcass." At 224 Spencer St., the building is wrapped in white-and-blue paper siding, making it look like a present that was never gifted. Neighbors say the house has been in this state for more than a year.

Walters' attorney, Howard Leader, told *The New York World* his client was not guilty and would fight the case.

TWO GUILTY PLEAS

Through the program, the city selected small, local entrepreneurs to carry through its projects, seeking to stimulate the economies of low-income neighborhoods by using local labor and businesses. The entrepreneurs planned and oversaw the rehabilitation and design of the buildings, and were assigned to recommend general contractors to the HPD for approval.

The program continues to function, but with just 18 of the 788 buildings left to complete, it's nearing its end. Most of the projects have been completed and are now occupied. Yet other buildings touched by the alleged bribery scheme now blight neighborhoods they were supposed to help revive.

The case against Walters and the other six defendants hinges on accounts by two men identified in court filings as "John Doe #1" and "John Doe #2," contractors who attested to paying bribes to Walters and other defendants. Both pleaded guilty on Oct. 5 to charges of racketeering conspiracy, bribery, wire fraud conspiracy and money laundering. That case has been sealed.

Their names have been withheld because they are cooperating witnesses in the Walters case. But details in the FBI's search warrant of Walters' home and office, combined with property records, real estate advertisements and building permits, reveal that John Doe #2 is George Armstrong, the former head of the Housing Partnership Development Corporation. The Housing Partnership, a former affiliate of the

business group Partnership for New York City, worked with the Giuliani administration to create the Neighborhood Entrepreneurs Program as a centerpiece of the administration's housing program.

When he was arrested, Walters was HPD's assistant commissioner for new construction. But he was previously in charge of the Neighborhood Entrepreneurs Program, from 1998 until about 2007. During Walters' first years with responsibility for NEP, Armstrong ran the Housing Partnership's side of the program. An FBI affidavit asserts that John Doe #2 – Armstrong — “worked closely with Walters, who was then the head of NEP, on several HPD real estate development projects.”

Records show that Armstrong was recently a general contractor on at least 61 city projects, all of them run through Walters' office, though none of them appeared to be part of NEP. Nearly a third of those projects still lack certification that they are complete and legal to inhabit, even though construction on some began more than four years ago.

One group of six Bedford-Stuyvesant buildings on which Armstrong served as contractor between 2007 and 2010 still hold no valid certificates of occupancy, according to the city's online register. All but one of the buildings are boarded up and empty.

Armstrong's New York City contractor license expired last November. HPD spokesman Eric Bederman would not comment on specific construction projects but said, “We monitor the work sites on all HPD projects to ensure safe and timely completion of construction.”

The New York World visited Armstrong at his home in Staten Island, where he declined to discuss details of the Walters case. Armstrong told *The New York World* he was involved in several court cases pertaining to his business dealings with HPD.

Records show that John Doe #1 is a general contractor, Bogdan Starzecki, aka Bob, who worked on dozens of Neighborhood Entrepreneurs Program sites. Starzecki was a defendant in a 2005 racketeering suit filed by workers. The suit alleged that he and his subcontractors severely underpaid carpenters, masons and other workers on federally subsidized HPD jobs, which were overseen by Walters.

Starzecki did not return repeated calls from *The New York World* made to his home, attorney's and business numbers. *The New York World* also visited Starzecki's office at MCR Restoration in the Bronx. An office worker who identified himself as Carlos said, “I have all your messages. I've passed them on. I can't do any more than that,” and added, “I'm really sorry, but I can't call Mr. Starzecki.”

In a 2008 settlement with 10 workers, Starzecki and the other employers agreed to pay workers back (the sum is not disclosed in public records). One of the subcontractors, Josef Wolosz, was subsequently convicted in a separate criminal case of conspiring to retaliate against the plaintiffs and their attorney who sued for their wages; he is currently appealing his case.

During the criminal proceedings, Wolosz admitted to depriving workers of their full pay and to conspiring with Starzecki in the scheme. “I didn't pay those prevailing wages and I was aware of that,” said Wolosz in a hearing before Brooklyn Federal Judge Robert Levy in September 2010. “I knew that it was a fraud. I agreed it with (sic) Bogdan Starzecki to do that.”

Permit records from the city show Starzecki was the contractor on 53 NEP buildings from 2004 to 2011, or about one of every eight buildings completed under the program since Starzecki allegedly began making payments to Armstrong in 2002. (Records from 2002 to 2004 were not readily accessible.) During this period, Starzecki was also a contractor on more than 42 buildings built or renovated under other HPD programs.

Prosecutors assert that John Doe #1 — Starzecki — paid \$420,000 in bribes to Walters, including sums hidden in overnight mail envelopes, a coffee cup, and a box of golf balls. With the help of these payments, he was allegedly able to secure a place as a go-to contractor for NEP.

ENTREPRENEUR PAYMENTS

In the mid-1990s, the city owned some 44,000 apartments from Bedford-Stuyvesant to Harlem to the Grand Concourse whose landlords had failed to pay property taxes. Squatting was rife, and the housing stock was crumbling. Into those conditions the Neighborhood Entrepreneurs Program was born.

Combining city, federal and private money — and run jointly by the city and the New York City Housing Partnership — the program tagged blocks of buildings for renovation and then sold them to developers selected in a competitive process. These entrepreneurs had to prove their track record and their ties to the local community. They were not allowed to evict current tenants, and they had to agree not to sell the buildings for 18 years. In that way the city could phase itself out of being a landlord while improving conditions in some of the most run-down buildings in the city.

Deborah Wright, who was commissioner of HPD during the early 1990s, teamed up with Housing Partnership CEO and founding president Kathryn Wylde to create the Neighborhood Entrepreneurs Program. Today, Wright is CEO of Carver BankCorp, a local financial institution. She is proud of what the program has achieved. "It's one of the most successful housing schemes this city has implemented," said Wright. "It's literally changed the face of New York."

She recalls how thousands of families lived in appalling conditions — often with no doors, no electricity and no running water. "They were destroying neighborhoods and lives," she said. "NEP fixed a lot of that."

"I've stayed in the touch with most of the entrepreneurs and they say the the program has served them well," said Wylde. "They are all sick that the program has been tarnished."

Between 1996 and 2002, George Armstrong was director of NEP at the Housing Partnership Development Corporation and then president and CEO, acting as the intermediary between the city and developers participating in the program. According to his online biography at his real estate company, Metropolis Development, Armstrong was responsible for leveraging more than \$1 billion in private and public financing at the Partnership. Through NEP alone, Armstrong oversaw the development of 6,000 apartments deploying \$800 million of private and federal loans.

NEP was the Giuliani administration's market-driven alternative to the tenant-run co-ops that had been the center of previous attempts by the city to repair and divest the buildings it had come to own. At the time, some housing advocates worried about what would happen under a profit-based program.

One longtime critic of NEP, Harvey Epstein from the Urban Justice Center, says he's not surprised to learn the program became enmeshed in corruption. "You move a program into the realm of profit-making and you find you have people wanting to make profit," he said. "The issue is a lack of oversight. There just aren't enough checks and balances in place over people of Walters' stature."

But the accusations against Walters have surprised even longtime critics of NEP. Developers and contractors who worked alongside Walters have told *The New York World* they found him to be a highly professional, reasonable government employee. One source was "dumbstruck" by the indictment.

The indictment and FBI statements to the federal court describe arrangements in which Walters allegedly received payments not only from contractors, but from developers — the "entrepreneurs" in Neighborhood Entrepreneurs. Six developers are named codefendants with Walters, and they include three — Stevenson Dunn, Lee Hymowitz and Michael Freeman — who hired Armstrong as general contractor on a series of Brooklyn jobs and subsequently, according to prosecutors, made payments to Walters.

By 2004 or 2005, the FBI affidavit alleges, calling him John Doe #2, Armstrong made the first of two \$10,000 payments to Walters to secure general contracting work with HPD. Dunn later reportedly demanded that Armstrong make payments to a company he and his partners controlled. According to authorities, the defendants said the funds were needed to pay off "The Big Man," identified in court filings as Walters. Armstrong reportedly made \$50,000 in these additional payments to Dunn.

According to the prosecution, Dunn didn't deduct these kickbacks when he charged HPD for one project Armstrong worked on. That meant, the case alleges, that HPD was effectively overcharged for the project. Dunn, Freeman and Hymowitz then sent the money to two companies they controlled, prosecutors say. The indictment sets out allegedly fraudulent wire transfers between 2007 and 2008 worth \$68,976.63. Another \$493,527 allegedly went to a company controlled by Dunn. These payments were reportedly pulled from a cluster of four Brooklyn buildings in a program overseen by Walters, two of which still are not completed.

ACID AND BEATINGS

Some of the most disturbing charges involving city housing programs are not leveled at Walters, but at the contractors who were allegedly paying him off. At the criminal trial of Wolosz, the subcontractor who worked with Starzecki, Assistant U.S. Attorney Cristina Poza outlined a scheme of wage extortion, in which Wolosz "would pay certain of his workers the prevailing wage amount, have them cash those checks and then return a large portion of his — of their paychecks to him. And then they would report the inflated wages to the City in order to receive funding based on the inflated wages." Then she added: "He did this in concert with ... Bogdan Starzecki."

After Wolosz and the courts settled the wage dispute, he hired men to threaten the laborers – the obstruction of justice for which he was convicted in 2010. The FBI recorded and transcribed Wolosz saying, “[t]hose people who ****ing did this to me, I will ****ing get them, one by one.”

Wolosz and his team did, according to prosecutors, enact some retaliation – they paid \$15,000 to have acid thrown on one of the laborers’ girlfriends as she walked to work. She suffered first- and second-degree burns. In court transcripts, an accomplice is quoted as saying “Just give them a [expletive] beating, legs...whatever they can get. It would be the best punishment right? Nothing needs to be said, you understand?” Wolosz pleaded not guilty to the attacks and is appealing his case.

Wolosz directly implicated Starzecki in his federal criminal proceedings, fingering Starzecki as a co-conspirator in the skimming of wages from their workers. The court asked Wolosz whether he was part of a wire fraud between June 2004 and April 2005.

“Yes,” replied Wolosz.

The prosecutor then asked, “And that conspiracy you undertook with Bogdan Starzecki. Is that correct?”

“Yes,” replied Wolosz again.

Bogdan Starzecki continued to complete contracts for HPD. His last building permit for an HPD project was issued in September 2010 – the same month his former subcontractor identified him as his partner in crime.

This article was written by Alice Brennan at The New York World, an accountability journalism project covering city and state government, based at the Columbia University Graduate School of Journalism. Follow @thenyworld on Twitter and visit thenewyorkworld.com.

City didn't see the corruption

BY BARBARA ROSS
and BRIAN KATES
NEW YORK DAILY NEWS

Indicted Housing big had ties to biz that got breaks

CITY OFFICIALS missed a glaring clue that could have exposed a corruption scheme that resulted in the indictment of one of the Bloomberg administration's top housing officials, the Daily News has found.

Assistant Housing Commissioner Wendell Walters was charged last month with pocketing \$600,000 in bribes from contractors and developers seeking help in getting city work.

Long before he was arrested, Walters filed a city financial disclosure form revealing a financial interest in a deli located in a Harlem building that was overhauled through a program headed by Walters.

Additionally, a liquor license issued to the deli, called Pascal's Eatery, lists Walters as partners with Jose Espinal and two contractors who worked on many HPD projects. Demunros and Sillanos-Varkaris. Espinal and the Varkarises have not been charged.

Financial disclosure reports are filed with the Conflict of In-



City Housing honcho Wendell Walters was charged with taking \$600,000 in bribes. Photo by Marcus Santos

terest Board, which does not have data on city contracts.

"No one here would have recognized [the deli's] address," said a board official who asked not to be identified. "Maybe it would have rung a bell at HPD."

Meanwhile, the Department of

Housing Preservation and Development does not review the annual forms. Instead, the agency relies on an "internal requirement" that managers disclose outside business interests when they are hired or promoted—not on a year-

In addition, oversight of HPD is shared by two inspectors general who watch over five agencies with 15,000 workers and a total construction budget of \$2.7 billion.

"Given the value of the contracts that HPD handles, it seems

the personnel available are grossly inadequate to make sure there is no nanky-panky," said Gene Russianoff, of the New York Public Interest Research Group.

Prosecutors say Walters got a deal on a townhouse on tony Sittvers Row in Harlem that amounted to a bribe from Gregory Pascal, who helped develop the deli.

After Pascal died in 2005, Walters was involved in enabling the transfer of Pascal's HPD properties—including the deli building—to his partner on the liquor license, Espinal, court papers allege.

Espinal got years of tax breaks from the W. 129th St. deal—a savings of \$99,146 this year alone, records show.

Prosecutors say in return, Espinal sold Walters a Bronx building Walters said was worth \$1 million for a paltry \$80,000.

And not long ago, records show Walters lent Espinal \$175,000—a loan he never reported on his disclosure forms.

"If HPD had known, he would have been fired," said HPD spokeswoman Cattie Marshall.

bkates@nydailynews.com

THE WALL STREET JOURNAL

WSJ.com

OCTOBER 7, 2011, 11:37 AM ET

New York City Housing Official, Six Others, Charged In Bribery Scheme

By Samuel Rubinfeld

A top New York City housing official was charged with taking at least \$600,000 in bribes and kickbacks in a decade-long scheme with real-estate developers.

Wendell Walters, a deputy commissioner in the city's Department of Housing Preservation and Development, and six developers were each arrested in their homes in New York and New Jersey. The Wall Street Journal report on the alleged scheme is [here](#).

They were arraigned in Brooklyn Federal Court. The alleged bribes, which Walters was charged with taking in exchange for steering millions of dollars worth of contracts on low- and middle-income housing between 2002 and 2011, were sometimes hidden in golf-ball boxes, overnight mail envelopes or rolled up in coffee cups, according to an affidavit cited in the Journal report.

"New Yorkers relied on these defendants for the safe haven of affordable housing," said Loretta Lynch, the U.S. Attorney for the Eastern District of New York, [in a statement](#). "Instead, the defendants allegedly put their own greed over the needs of low-, moderate and middle-income New Yorkers."

The 26-count indictment charges the defendants with racketeering, extortion, bribery and money laundering. Lawyers for all seven defendants pleaded not guilty. They all declined to comment to the Journal, as did the defendants.

Walters, who was also referred to as "The Big Man" and "The Tall Guy" in the indictment, allegedly summoned a general contractor referred to as "John Doe #1" to multiple locations around the city to hand him a slip a paper with a number on it — usually "250," signifying a \$250,000 demand, according to the indictment. In subsequent meetings, "John Doe #1" paid Walters in cash, often in amounts of more than \$25,000 at a time, according to court records.

The other defendants were business partners Stevenson Dunn, 50 and a high-school friend of Walters, Lee Hymowitz, 60, and Michael Freeman, 64; Sergio Benitez, 51; Robert Morales, 52; and Angel Villanova, 52. They were all released on bond.

That's a 'latte' money

City big busted for 600G coffee-cup 'bribes'

By MITCHEL MADDUX, DAVID SEIFMAN and DAN MANGAN

Last Updated: 7:21 AM, October 7, 2011

Here's some sugar for your coffee.

A top city housing official was busted yesterday on charges of accepting \$600,000 in bribes -- with some of that cash delivered in coffee cups -- in exchange for directing tens of millions of dollars worth of affordable-housing building contracts to developers, authorities said.

Assistant Housing Commissioner for New Construction Wendell Walters was arrested along with six developers.

Prosecutors charged the six with shaking down general contractors that were hired for projects funded by Walters' Department of Housing Preservation and Development.

"These defendants saddled the city's affordable-housing program with a criminal pay-to-play scheme, lining their pockets at the public's expense," said city Department of Investigation Commissioner Rose Gill Hearn, whose agency uncovered the decade-long scam, which netted up to \$2 million in kickbacks and bribes.

The FBI and prosecutors who filed the case in Brooklyn federal court said the scheme cost HPD hundreds of thousands of dollars in overpayments for projects in Brooklyn, Queens and The Bronx.

Mayor Bloomberg said, "We just have no tolerance for corruption with anybody in city government," but insisted Walters' alleged crimes were an aberration among the city's 330,000 employees.



BITTER TASTE: Assistant Housing Commissioner for New Construction Wendell Walters (above) is arrested yesterday, and FBI agents raid his home in what prosecutors say was a pay-to-play scheme for contracts.

He said Walters has been suspended without pay, and the six developers barred from receiving city work.

Court documents reveal in damning detail how Walters, 49, a former Iona College basketball standout, allegedly shook down a general contractor identified only as "John Doe #1."

Beginning in 2002, the papers say, Walters met "Doe" at a Manhattan coffee shop, and "during that meeting, Walters wrote '250' on a piece of paper and showed it to John Doe #1, which John Doe #1 understood to mean that [he] would have to pay Walters a \$250,000 bribe in order to secure future work for HPD."

Over the next seven years, prosecutors claim, "Doe" ended up giving Walters hundreds of thousands of dollars in bribes to secure contracting and development project funds from HPD that often totaled "in excess of \$10 million."

Doe disguised the payments by placing them in "overnight mail envelopes and golf-ball boxes [and] ... coffee cups," the feds claim.

Doe also was allegedly shaken down by several of the developers arrested yesterday, among them real-estate attorneys Lee Hymowitz and Michael Freeman, as well as developer Sergio Benitez.

The other developers arrested yesterday were Stevenson Dunn, Robert Morales and Angel Villalona.

All of the defendants were released yesterday on \$500,000 bonds after appearing in Brooklyn federal court, except for Morales, who was released on \$300,000 bond.



Thursday, October 13, 2011

FBI Arrests City Official, 6 Others in Alleged Corruption Scandal

A New York City assistant commissioner was arrested by the FBI Thursday in connection with a bribery and extortion investigation, law enforcement officials said.

Wendell Walters, of the city's Department of Housing Preservation and Development, was arrested along with six others, investigators said.



Walters, who worked as an assistant commissioner for new construction, was charged with taking hundreds of thousands of dollars in bribes and kickbacks in connection with housing developments in the city, NBC New York has learned.

Six developers and contractors were also charged in connection with the probe.

HPD has provided more than \$8 billion in the construction and repair of housing since 1987.

An FBI spokesman confirmed the arrests but declined further comment, saying federal prosecutors in Brooklyn would be detailing the charges later Thursday.

Attempts to reach a Walters representative and department spokesman Eric Bederman were not immediately successful.

NYPD, the Department of Investigation, Housing and Urban Development and IRS officials assisted the FBI in the probe.

Law enforcement officials were seen executing search and arrest warrants at several locations this morning.



[\[Back to Press Releases - Main Page\]](#)

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FOR IMMEDIATE RELEASE

October 6, 2011

PRESS RELEASE

**ASSISTANT COMMISSIONER OF NYC DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
INDICTED FOR RACKETEERING, BRIBERY AND EXTORTION**

Six Others, Including Manhattan Attorneys and NYC-Wide Real Estate Developers, Also Charged

Federal and New York City law enforcement agents and officers today arrested an Assistant Commissioner for the New York City Department of Housing Preservation and Development (HPD) and six others on charges of racketeering conspiracy, bribery, extortion, wire fraud and money laundering in connection with corruption schemes that netted the defendants between one and two million dollars in kickbacks and bribes over a decade and cost HPD hundreds of thousands of dollars in overpayments to developers on HPD projects in Brooklyn, Queens and the Bronx. Wendell Walters, HPD's Assistant Commissioner for New Construction, and real estate developers Stevenson Dunn, Lee Hymowitz, Esq., Michael Freeman, Esq., Sergio Benitez, Robert Morales and Angel Villalona will be arraigned this afternoon on a 26-count indictment before United States Magistrate Judge Robert M. Levy, at the U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York. The case has been assigned to United States District Judge Nina Gershon.

The case was announced by Loretta E. Lynch, United States Attorney for the Eastern District of New York; Janice K. Fedarcyk, Assistant Director-in-Charge, Federal Bureau of Investigation, New York Field Office (FBI); Robert Panella, Special Agent-in-Charge, United States Department of Labor (DOL); Rose Gill Hearn, Commissioner, New York City Department of Investigation (DOI); Charles Pine, Special Agent-in-Charge, Internal Revenue Service, Criminal Investigation, New York (IRS); and Kevin Chan, Acting Special Agent-in-Charge, United States Department of Housing and Urban Development, Office of Inspector General, New York (HUD).

HPD is the largest municipal developer of affordable housing in the United States. During his tenure at HPD, Walters oversaw various programs, including the Neighborhood Entrepreneurs Program and the Division of Housing Production, which were aimed at enabling private property managers, developers and non-profits to build and rehabilitate buildings to provide affordable housing. City regulations permit HPD to award projects to private developers, who in turn hire general contractors to carry out the construction and rehabilitation of city-owned vacant and under-utilized properties.

The indictment and search warrant application for Walters' residence and HPD office allege that beginning in 2002, Walters accepted approximately \$600,000 in bribes from general contractors and real estate developers in exchange for awarding them HPD contracts. On multiple occasions, Walters allegedly summoned a general contractor, identified as John Doe #1 in the indictment, to various locations around the city, including a golf driving range in the Bronx, where Walters would hand John Doe #1 a slip of paper with the amount – usually "250," signifying \$250,000 – that Walters was demanding. In subsequent meetings, John Doe #1 would make cash payments, often in excess of \$25,000 at a time, to Walters, hiding the money in golf ball boxes, overnight mail envelopes and coffee cups. During the same time period that he was paying these bribes, John Doe #1 was awarded the general contracts for the following HPD projects: the Lexington Avenue, Watkins Avenue Cluster, Bedford-Stuyvesant and Cooper-Decatur Cluster projects in Brooklyn, the Alexander Avenue and Crotona Park Cluster projects in the Bronx, and the Guy Brewer North Homes in Queens. The value of these general contracts was often in excess of \$10 million. Additionally, real estate developer Dunn, a friend of Walters since high school, admitted in a consensually-recorded conversation that Walters, whom Dunn described as "greedy," demanded \$75,000 from Dunn and actually received \$25,000.

Dunn, his business partners Hymowitz and Freeman, and real estate developers Benitez, Morales and Villalona, after being awarded development contracts by HPD, also allegedly demanded kickbacks from general contractors in exchange for awarding them construction work on the HPD-funded projects. In one instance, in an attempt to disguise over \$100,000 in kickback payments they received from John Doe #1, real estate attorneys Hymowitz and Freeman issued a sham legal retainer agreement to John Doe #1. In exchange for hiring John Doe #1 on another HPD project in Brooklyn, Benitez demanded that John Doe #1 kick back a percentage of the payments he received from HPD. In yet another project, Dunn allegedly demanded, with Walters' knowledge, kickbacks from another general contractor and real estate developer, identified in the indictment as "John Doe #2", in exchange for work on an HPD project overseen by Walters. According to the indictment, Dunn allegedly resorted to violent threats to collect the money from John Doe #2.

"New Yorkers relied on these defendants for the safe haven of affordable housing. Instead, the defendants allegedly put their own greed over the needs of low-, moderate- and middle-income New Yorkers. As detailed in the government's indictment and other court filings, the defendants corruptly lined their own pockets by stealing millions of dollars in public funds dedicated to affordable housing," stated United States Attorney Lynch. "In doing so, they undermined HPD's mission and cheated the taxpayers, who ultimately fund that mission." Ms. Lynch praised the FBI, DOL, DOI, IRS and HUD, and the Organized Crime and Gang Section of the Justice Department's Criminal Division, for their exceptional and collaborative investigative efforts in this long-term investigation.

FBI Assistant Director-in-Charge Fedarcyk stated, "This scheme involved, among others, a public official and two attorneys, people with an ethical duty to avoid even the appearance of impropriety. As alleged, these defendants went way beyond that. They engaged in collusive criminal conduct that enriched them and victimized taxpayers."

DOL Special Agent-in-Charge Panella stated, "Today's indictment is a result of a law enforcement collaboration aimed at rooting out alleged corruption in the New York City Department of Housing Preservation and Development and federally funded projects. We will continue to work proactively with our law enforcement partners to investigate these types of crimes."

DOI Commissioner Gill Hearn stated, "These defendants saddled the City's affordable housing program with a criminal pay-to-play scheme, lining their pockets at the public's expense, the indictment charges. Most troubling is that a veteran City housing official allegedly misused his position of trust to collect hundreds of thousands in payoffs. DOI worked hand-in-hand with our federal partners to penetrate, expose and stop this insidious abuse of the City's efforts to develop housing for hard-working New Yorkers. The investigation continues, and DOI will work with HPD to close the gaps that allowed the corruption to take root."

IRS Special Agent-in-Charge Pine stated, "Money laundering is often part of a larger investigation of financial fraud, including kickbacks and bribes. Internal Revenue Service Special Agents are well trained in dealing with traditional as well as new and innovative ways individuals attempt to hide illegally obtained money. It is just a matter of time before the schemes are uncovered and the individuals involved brought to justice."

HUD/OIG Acting Special Agent-in-Charge Chan stated, "The indictment of these individuals is an example of HUD/OIG's commitment to investigate those who allegedly take advantage and defraud the HUD programs. This joint prosecutorial effort demonstrates our continued dedication to combat fraud with our law enforcement partners to bring those who are responsible to justice."

If convicted of the most serious offenses, each defendant faces a maximum of 20 years' imprisonment. The government will also seek to forfeit at least \$22 million in proceeds that the defendants received as a result of their schemes.

The government's case is being prosecuted by Assistant United States Attorneys Cristina Posa, Anthony Capozzolo and Claire Kedeshian.

Assemblyman Again Faces Bribe Charges

By SEAN GARDINER And TERIN MILLER

NOVEMBER 30, 2011

A Brooklyn assemblyman acquitted of corruption charges this month was charged again Tuesday in a separate federal case with accepting bribes and soliciting kick-backs connected to carnival and real-estate deals.

The accusations of bribery and attempted extortion marked a stunning turn of fortune for Assemblyman William Boyland Jr. and suggested an influence-peddling scheme that reached into New York City government.



Peter J. Smith for The Wall Street Journal
William Boyland leaving the courthouse in Brooklyn on Tuesday

Federal authorities accused Mr. Boyland, 41 years old, of seeking "a stream of bribes" totaling \$14,000 in exchange for promises to obtain necessary city permits for a carnival promoter and to secure a state grant to finance a real-estate deal for two undercover Federal Bureau of Investigation agents posing as developers.

Mr. Boyland also proposed a \$250,000 kickback scheme in connection with the deal, the purchase and quick resale of a shuttered Brooklyn hospital in his district, according to an arrest warrant affidavit.

In secretly recorded conversations, Mr. Boyland told of his influence with the city Parks Department and said he had the Department of Housing Preservation and Development "locked up," according to the warrant.

Just 19 days earlier, Mr. Boyland walked free of charges that he helped a hospital with legislation in exchange for a "no-show" job. Many of the accusations in Tuesday's complaint relate to actions Mr. Boyland took after his first indictment on March 10.

Dressed in a blue Adidas track suit, Mr. Boyland pleaded not guilty before U.S. Magistrate Judge Joan M. Azrack in the Brooklyn federal courthouse Tuesday afternoon. He was released on a \$100,000 bond. He is barred from traveling outside New York without permission.

Mr. Boyland, a Democrat who represents the 55th Assembly district, didn't speak after the hearing. His attorney Michael Bachrach pledged to "vigorously defend" against the new charges.

"We're sorry we have to be here again," Mr. Bachrach said.

An aide to Mayor Michael Bloomberg declined to comment on a federal investigation.

A law-enforcement official with knowledge of the case said Mr. Boyland was arrested again after attempts to convince him to cooperate in a related investigation broke off Tuesday. The new charges stemmed from a federal probe into carnival-industry corruption that ran from August 2010 through June and included many recorded meetings in restaurants, Mr. Boyland's district office and hotels.

An unnamed carnival promoter who cooperated with authorities introduced an undercover FBI agent to Mr. Boyland, saying he was a family friend who owned an import-export business in Philadelphia and dabbled in real estate. That agent then introduced a second FBI agent to Mr. Boyland as a Florida real-estate developer.

Mr. Boyland helped secure city leases called "Temporary Use Device Licenses" necessary to run carnivals and received about \$7,200 in bribes from an agent on behalf of the carnival promoter, the warrant said. Some of the carnival grounds were controlled by the Housing Preservation and Development Department, an agency that, according to the affidavit, Mr. Boyland told the men that they had "locked up."

In March and April, Mr. Boyland spoke to the undercover agents several times about state-financed real-estate projects, boasting he could introduce them to city and state government officials, according to the affidavit. "You know, I'm the politician. I'm the guy who can make that move over on this end," Mr. Boyland said, according to the affidavit.

One of the agents gave him \$7,000 in exchange for his help.

In late April, Mr. Boyland met the FBI agents in an Atlantic City hotel room and proposed that they buy a defunct Brooklyn hospital building for \$8 million and then resell it to a nonprofit he controlled for \$15 million, according to the affidavit. The nonprofit and the hospital were not specified in the affidavit. "That's a good profit on that and it's a quick turnaround," Mr. Boyland was recorded saying.

Mr. Boyland assured the agents he could get them state grant money to cover all the necessary renovation costs, the affidavit said.

"You can facilitate the grant?" the agent asked. "Yes. I can do it all," Mr. Boyland said, according to the affidavit.

When the agent asked how much money Mr. Boyland needed, he first brought up his then-pending legal case, saying, "I have to hire a good attorney."

Mr. Boyland is alleged to have then asked for \$250,000 that he proposed be paid through "a middle guy... I gotta stay clean," the affidavit states.

The agents said for that sum Mr. Boyland would have to introduce them to elected officials willing to take bribes, the affidavit states. Subsequent attempts by the undercover agents to have Mr. Boyland introduce them to other elected officials, however, were unsuccessful, the affidavit states.

In August, a Florida carnival company owner named Lawrence Carr was charged in New York with bribing former state Sen. Hiram Monserrate in a case similar to the one Mr. Boyland is charged in. Mr. Monserrate wasn't charged. Mr. Carr's attorney, Susan Kellman, said Mr. Carr isn't the cooperating carnival promoter in Mr. Boyland's case.

Most of the alleged \$7,200 bribe was deposited into one of Mr. Boyland's campaign accounts, the affidavit said. Mr. Boyland's three campaign committees have repeatedly been sued by the state Board of Elections for failing to make required disclosure filings. Collectively, they face sanctions of \$22,297. The most recent filing made by any one of the committees came in July, when his 2010 re-election effort filed a report a year late.

—Andrew Grossman contributed to this article.

The New York Times

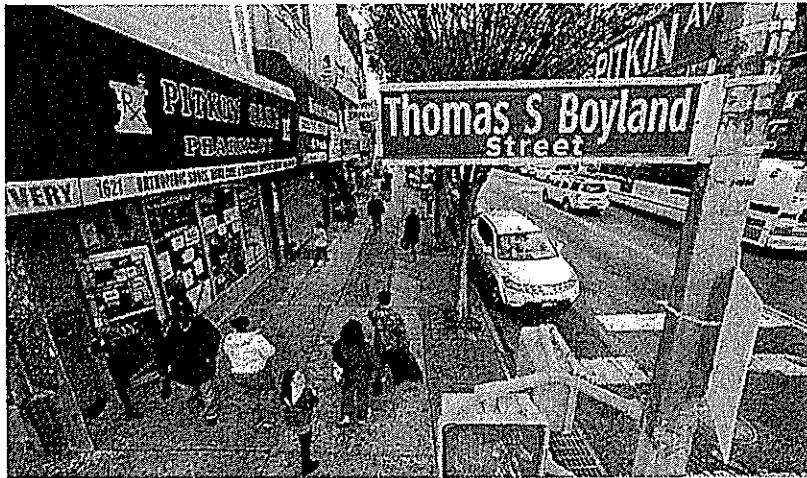
November 30, 2011

A Lawmaker Back in Trouble, in a District That Knows Despair

By LIZ ROBBINS

Devon Moore heard the news on Wednesday morning, and he was disgusted. But not surprised.

When Assemblyman William F. Boyland Jr. was indicted for a second time, accused again of soliciting bribes in exchange for official favors — in part to pay his legal fees from the first trial — longtime residents of Brownsville, one of Brooklyn's most economically depressed neighborhoods, just shook their heads in resignation.



It was yet another disappointment from the man with the well-known name they sent to Albany to help them.

"But of course — you expect more," Mr. Moore, 35, said. "But look where you're at."

He stood in front of the Peanut Lucky Supermarket, on a forlorn corner of Pitkin Avenue, a main shopping thoroughfare. He was steps from where a 34-year-old mother, who was trying to shield a group of children, was shot and killed in October by a teenager firing from a rooftop.

Violence and unemployment are the status quo in this neighborhood, and records indicate that in the more than eight years Mr. Boyland has been in Albany, he has done little to help change that.

He had one of the worst attendance records in the State Assembly this year, absent for 20 of the 60 days the Assembly was in session. He was the only member of the State Legislature who did not introduce a piece of legislation in this year's session, according to the New York Public Interest Research Group.

Mr. Boyland, 41, a Democrat, was first elected in 2003 (following his father in the State Assembly) to represent the 55th District, which includes Brownsville, Ocean Hill, Bedford-Stuyvesant, Crown Heights

and Bushwick. Since then, he has sponsored only two pieces of legislation that passed both the Senate and the Assembly, though he has been a co-sponsor of other bills.

One bill, authorizing a study on drugs for children with attention deficit disorder, was vetoed in 2010. The other, signed into law in 2005, made a technical change, sought by the Bloomberg administration, regarding loans given by the city's Department of Housing Preservation and Development for neighborhood improvement projects.

"This neighborhood really needs help," said Supreme Johnson, 40, a community advocate who founded the group Men Elevating Leadership and Youth in 2004. He sat in a barber chair on Pitkin Avenue, perplexed by the latest developments.

Even more galling to him than Mr. Boyland's political inaction or bribery charges — Mr. Boyland was acquitted in the first case on Nov. 10 — was that the money he is accused of demanding could have been used in a far better way, Mr. Johnson said.

"We have to give people, those who can stop kids from killing each other and selling drugs, the chance to get these kids involved in other activities," he said.

Mr. Johnson said Mr. Boyland contributed to youth sports programs in the summer. "But where's he getting it from, and who's he paying off?" he said.

Few in the community could supply concrete answers on Wednesday about services that Mr. Boyland had delivered to his constituents. Viola D. Greene-Walker, the district manager for Community Board 16, spanning Ocean Hill and Brownsville, said that Mr. Boyland "was able to bring some programs into the community, like funding for some of the housing that has been built."

Mr. Boyland's district office in Brownsville is on Thomas S. Boyland Street, named for his uncle, a popular state assemblyman who was a highly regarded advocate for the less fortunate. The storefront office was virtually empty Wednesday afternoon.

A spokeswoman for Mr. Boyland did not return messages.

"The community loses again, not only to violence but to corruption," said Tony Herbert, an activist who plans to run for Mr. Boyland's seat.

The federal complaint issued on Tuesday said that Mr. Boyland negotiated \$250,000 in bribes. The Capitol, a political newspaper, reported that Mr. Boyland filed per diems — fees intended to repay his expenses while in Albany — on several days when he was meeting with undercover agents in Brooklyn.

Asked about Mr. Boyland's claims that he had connections in City Hall and influence over certain city agencies, including the parks department, Mayor Michael R. Bloomberg said on Wednesday: "From what we can tell it's just idle boasts."

In the complaint, Mr. Boyland told an undercover agent and a cooperating witness that he had met with a deputy parks commissioner to discuss bringing a carnival to Brooklyn, saying: "We pretty much have a green light here guys. ... We can pretty much do what we need to do here."

A person with knowledge of Mr. Boyland's relationship with the department, who spoke on condition of anonymity because the investigation is continuing, denied that Mr. Boyland met with anyone from the parks department about a carnival.

Blocks from Mr. Boyland's office, at the Glenmore Plaza Senior Center, a worker served women sugar for their tea as they created art projects.

Because of a lack of financing, she said, she bought the supplies with her own money. In the past, Mr. Boyland's office had contributed to the youth and senior programs, but not recently.

"It is really sad," said the employee, who would not give her name because she was afraid she would lose her job. "You represent our district and you're putting it in your own pocket."

The New York Times

November 29, 2011

By *BENJAMIN WEISER* and *MOSI SECRET*

Even to those accustomed to the sins of New York politicians, the latest trials and tribulations of Assemblyman William F. Boyland Jr. may have hit a new low.

Mr. Boyland, 41, who comes from one of Brooklyn's most prominent political families, was arrested on Tuesday on federal bribery charges in the borough; the arrest comes nearly nine months after he was arrested on similar but separate bribery charges in Manhattan, and on which he was recently acquitted.



In the new case, prosecutors said Mr. Boyland, a Democrat, had the temerity to continue to commit bribery — they say he solicited more than \$250,000 in bribes — even after he had been charged in the Manhattan case.

And in a twist, he intended to use some of the bribe money to pay for lawyers who were representing him in the Manhattan bribery case, prosecutors said; in one instance, he solicited \$7,000 in cash bribes to “solidify some attorneys,” as he put it in a phone call that was secretly recorded by the government.

Mr. Boyland was acquitted on Nov. 10 in the Manhattan case, and left the courthouse that day triumphantly; he declared he was looking forward to returning to his work as an assemblyman. That case was circumstantial and the jury never heard Mr. Boyland's voice, for example, on secretly recorded phone calls. His voice is all over the new case, the authorities say.

Last April, for example, weeks after he had been released on bond in the earlier case, Mr. Boyland was secretly recorded by the authorities as he solicited a \$250,000 bribe from two undercover agents with the Federal Bureau of Investigation in an Atlantic City hotel suite. In that conversation, he talks about his need to “stay clean” and work through a “bag man,” a criminal complaint shows.

He also says that he prefers personal meetings to phone calls, according to the complaint. “I stopped talking on the phone awhile ago,” he said, adding, “especially with what we're talking about.”

The complaint quotes Mr. Boyland as telling the undercover agents, who were posing as investors interested in real estate projects in Brooklyn, that he needs \$250,000 to cover his “legal fees for this legal thing that I have,” a clear reference to the Manhattan bribery case.

“I have a good attorney — I just can't pay him,” Mr. Boyland says with a laugh, according to the complaint. “I have to ... get clear of these ... charges, but I have to sort of come back in a bigger sense. ... That, that's what has to happen.”

Mr. Boyland was arrested at his home in Brooklyn on Tuesday morning, an official said; later in the day, he appeared in Federal District Court in Brooklyn, wearing a blue jogging suit and sneakers. His demeanor was calm.

Magistrate Judge Joan M. Azrack released him on a \$100,000 personal recognizance bond and ordered him not to leave the state.

"We're sorry to have to be here again," his lawyer, Michael K. Bachrach, said as he and Mr. Boyland left the courtroom. "We intend to vigorously defend this case," the lawyer added.

Mr. Boyland declined to comment.

The United States attorney in Brooklyn, Loretta E. Lynch, who announced the new charges with Janice K. Fedarcyk, the F.B.I. official who leads the bureau's New York office, said the "extent of the charged corruption is staggering."

Prosecutors accused Mr. Boyland of soliciting and accepting a stream of bribes beginning in August 2010 from a carnival promoter who had known Mr. Boyland for years, and who was cooperating with the government. In exchange, Mr. Boyland agreed to take official actions to secure business opportunities, according to the complaint, which is signed by F.B.I. Special Agent Richard Wilfling.

The complaint says the case stemmed from an investigation into political corruption in the carnival business, and cites another elected official, identified only as John Doe No. 1, who was said to have solicited a bribe from a carnival operator in the past.

Originally, the undercover agents said they were looking for locations for carnivals in Brooklyn, and Mr. Boyland had said he would help them, the complaint notes.

In October 2010, Mr. Boyland told the undercover agents that he had the city's Department of Housing Preservation and Development "locked up," the complaint says, adding that Mr. Boyland apparently intended to have the city agency help find carnival locations.

Mr. Boyland and the agent also discussed ways to compensate Mr. Boyland for his assistance, the complaint says. "Boyland suggested 'a consultancy,'" by which he would accept payments disguised as consulting fees, the complaint charges.

In November 2010, Mr. Boyland was recorded telling one undercover agent and the carnival promoter that he had arranged for a meeting with the new parks commissioner for Brooklyn, the complaint says. "We pretty much have a green light here, guys," Mr. Boyland says, according to the complaint. "We can pretty much do what we need to do here."

Vickie Karp, a spokeswoman for the parks department, said: "It's premature to comment. We're looking into it."

In the April meeting in the Atlantic City hotel suite, in which Mr. Boyland solicited \$250,000, the assemblyman proposed a deal by which the two agents posing as investors could buy a financially

troubled hospital in his district for \$8 million, renovate it with state grant money that he would help obtain and then resell it for \$15 million to a nonprofit organization that Mr. Boyland indicated that he controlled, prosecutors said.

One undercover agent asked how much money he wanted in the deal. "Don't be bashful," the agent says.

When the undercover agent asks for a specific figure, Mr. Boyland responds "Two fifty," the complaint says.

"Two hundred and fifty?" the agent asks.

"Yeah," Mr. Boyland responds.

Mr. Boyland, who was first elected in 2003, succeeded his father, William F. Boyland Sr., who had served two decades in the Assembly. The father, in turn, had succeeded his brother, Thomas S. Boyland, who won the seat in the late 1970s but died at age 39 in 1982. Mr. Boyland Jr.'s sister, Tracy, served on the City Council as well.

Mr. Boyland's Assembly district, the 55th, includes neighborhoods like Ocean Hill and Brownsville, and the community includes a street, school and park all named after Thomas Boyland.

In the trial in Manhattan, Mr. Boyland was acquitted of charges that he had conspired to take \$175,000 in bribes through a sham consulting agreement with the chief executive of a health care organization, MediSys, which runs hospitals in Brooklyn and Queens.

If convicted of the new charges, Mr. Boyland could face up to 30 years in prison, prosecutors said.

As he left the courthouse, Mr. Boyland was asked by a reporter whether he intended to remain in office. He nodded in assent. Then he walked into the rain shielded by his lawyer's umbrella.



[\[Back to Press Releases - Main Page\]](#)

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FOR IMMEDIATE RELEASE

November 29, 2011

PRESS RELEASE

**NEW YORK STATE ASSEMBLYMAN WILLIAM F. BOYLAND, JR. CHARGED WITH
BRIBERY AND ATTEMPTED HOBBS ACT EXTORTION**

**Recordings Capture Boyland Soliciting More Than \$250,000 in Bribes, Accepting Thousands
Bribes Solicited and Accepted Following Earlier Bribery Arrest**

Loretta E. Lynch, United States Attorney for the Eastern District of New York, and Janice K. Fedarcy, Assistant Director-in-Charge of the New York Office of the Federal Bureau of Investigation, today announced the unsealing of a complaint charging New York State Assemblyman William F. Boyland, Jr. with soliciting more than \$250,000 in bribes and accepting thousands of dollars of bribe money in exchange for performing official acts for the bribe payers.¹ Boyland was arrested this morning and is scheduled to be arraigned this afternoon before United States Magistrate Judge Joan M. Azrack, at the U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York.

The criminal complaint alleges the following:

Between August 2010 and June 2011, Boyland solicited and accepted a stream of bribes from a carnival promoter ("CW") and two undercover FBI agents ("UC1" and "UC2"), whom Boyland believed to be out-of-state businessmen and real estate developers. In exchange, Boyland agreed to take official action to secure business opportunities for CW, UC1 and UC2.

Carnival Scheme: Boyland Takes Over \$7,000 in Bribes

Starting in August 2010, Boyland, UC1 and CW met and discussed ways in which Boyland could assist CW and UC1 with CW's carnival business.² All the meetings were recorded. In explaining how he could help them secure carnival locations in his district, Boyland stated that he had the New York City Department of Housing Preservation and Development ("HPD") "locked up," and stated that "we got HPD . . . we're there."

Boyland and UC1 also discussed ways to "compensate" Boyland for his assistance, including by funneling payments to Boyland through a non-profit organization controlled by Boyland or through payments disguised as fees to a consulting firm.

UC1 ultimately made payments to Boyland. The first was a \$3,800 payment in the form of money orders to Boyland's campaign account in October 2010. The second payment occurred in February 2011, in the form of a \$3,000 check (where the payee line was left blank) and \$600 cash. In that case, UC1 specifically told Boyland that he did not want the \$3,000 check to be applied against the New York State campaign contribution limit of \$3,800. Boyland replied, "Got it, got it, got it. Makes sense." Despite this, the \$3,000 check was ultimately made payable to and deposited into Boyland's campaign account.

In return for these payments, Boyland told CW and UC1 that Boyland and his staff had engaged in discussions with governmental agencies to assist CW in obtaining leases and permits for his carnival business. In addition, at Boyland's direction, Boyland's staff provided UC1 with letters of support from Boyland, on his official State Assembly letterhead, on behalf of CW and the carnivals CW purported to be promoting.

Real Estate Scheme: Boyland Takes \$7,000 Cash Bribe

After Boyland was charged with bribery in a separate case in the Southern District of New York on March 10, 2011,³ Boyland and a member of his staff contacted UC1 seeking a direct, personal payment of \$7,000. In a recorded telephone call, Boyland told UC1 that he needed the money to "solidify some attorneys." Boyland stated that he was willing to travel to Philadelphia for the money and that he wanted the payment in cash.

On or about March 25, 2011, UC1 met Boyland at his district office in Brooklyn. During that meeting, which was recorded by UC1, Boyland and UC1 discussed real estate development projects in Boyland's district that Boyland had previously discussed with UC1 and UC2. UC1 made clear that the money he was going to give Boyland was coming from both him and UC2, and in response, Boyland stated, "We'll do business." UC1 then told Boyland that he and UC2 wanted state grant monies to help finance the proposed development projects. Boyland assured UC1 that the money was there and stated that his support was a "no brainer" because the projects are "right here at home."

At the end of meeting, UC1 gave Boyland the \$7,000 in cash, and stated: "Knowing that if you think you want to bring someone else onboard or knowing that you'll be there politically for us is all that we're looking for." In response, Boyland made a "thumbs up" sign and affirmed that "the political thing will be fine in terms of just where we need to go because I'm thinking environmental and I'm thinking the two houses of the state and city. You know, the relationships are there."

Approximately one week after Boyland took the \$7,000 cash bribe, he showed UC1 and UC2 different properties in his district. In a recorded conversation, Boyland assured UC1 and UC2 that certain zoning changes requested by UC1 and UC2 in connection with developing the sites were "not a problem." He emphasized that all the properties he was showing UC1 and UC2 were in his district, which "we have control over." Boyland later reiterated this point: "Everything we've seen I'm in control of. You know, I'm the politician. I'm the guy who can make that move over on this end, so we know the folks that can pull the sort of triggers we're looking for."

Hospital Buy-Back Scheme: Boyland Solicits \$250,000 Bribe

On or about April 29, 2011, during a recorded conversation in a hotel suite in Atlantic City, New Jersey, Boyland solicited a \$250,000 bribe from UC1 and UC2. Boyland proposed a scheme which called for UC1 and UC2 to purchase a former hospital in Boyland's district for \$8 million, obtain state grant money to renovate the hospital, and resell it to a non-profit organization that Boyland claimed to control for \$15 million. In

exchange for the \$250,000, Boyland promised that he would, among other things, arrange for the sale and take official action and use his influence to secure state grant money to allow UC1 and UC2 to renovate the hospital so that it could be sold to Boyland's organization for a profit.

During this meeting, Boyland promised that he would facilitate any needed state grants and also promised that he would arrange for one of UC2's purported investors to be awarded any demolition contracts related to the project. Boyland stated that "zoning won't be an issue," because he had "tons of friends" and knew "everybody on the Board" of the New York City Board of Standards and Appeals, which handles zoning issues.

Boyland further explained his desire to conceal his involvement in the bribery scheme. He stated, "I got a middle guy by the way . . . I gotta stay clean . . . I got a bag man . . ." Boyland also explained to UC1 and UC2 that he did not want to talk on the telephone about these activities and that he preferred in-person meetings: "I stopped talking on the phone awhile ago . . . I'm just saying there is no real conversation that you can have that, you know, especially with what we're talking about. You can't do that."

About one month later, Boyland, a member of his staff, and an individual whom Boyland described as a "developer" took UC2 on a site tour of the hospital.

On or about June 7, 2011, Boyland met with UC1 and UC2 in a hotel room in Manhattan. The meeting was recorded. Boyland reiterated that he wanted to be paid \$250,000. UC2 offered to pay Boyland \$5,000 for each introduction to another person who would accept bribes in connection with the development project. Boyland rejected the suggestion, stating that the people whom Boyland planned to introduce to UC1 and UC2 were worth more than \$5,000: "I'm not talking about \$5,000 folks. I'm talking about . . . people that can actually get these projects done and that's where we started off with. We started off, we didn't start off with, we can go with somebody who knows someone. We not talking about those folks . . . We talking about the man."

"As detailed in the criminal complaint, the extent of the charged corruption is staggering," stated United States Attorney Lynch. "The defendant had a strong political legacy, the trust of his community, and the privilege of serving it. Not content with these many benefits, the defendant is alleged to have auctioned the power of his seat in the Assembly to the highest bidder, for his own personal gain and to the potential detriment of the voters who elected him to office. Fortunately for his constituents and the people of New York, in this instance the "bidders" were working for the FBI. The message of this case is clear - we will utilize all available resources to protect the public's right to government free of corruption." Ms. Lynch stated that the government's investigation is continuing.

FBI Assistant Director-in-Charge Fedarcyk stated, "The charges announced today are all the more astonishing in light of the fact that Boyland allegedly committed much of the criminal conduct after he had already been charged in another bribery case. Boyland was unaware that it was two undercover FBI agents with whom he was arranging quid pro quo deals, and to whom he insisted on speaking in person to avoid the recording of incriminating phone calls. Recording phone calls is not the only method the FBI has available to fight public corruption."

If convicted, Boyland faces a maximum sentence of 30 years in prison.

The government's case is being prosecuted by Assistant United States Attorneys Roger Burlingame, Carolyn Pokorny and Lan Nguyen.

Procurement

Corruption allegations in procurement process are not always directly tied to extortion and bribery. The laxity of HPD procurement rules and the purposeful opaqueness of its procurement and funding processes create space for corruption and mismanagement.

In October 2011, the New York Times reported the rules HPD “uses to award development projects and construction contracts appear looser than those used by other city agencies.” The report, like the federal indictment against Walters, focuses on The Neighborhood Entrepreneur Program (NEP). HPD selects developers for NEP through a Request for Qualification, process whereby interested parties apply to HPD to be added to a prequalification list and then HPD matches prequalified parties to project. As the New York Times said it, “essentially, whomever the agency wants” is awarded the project.³

This legal flexibility and laxity in procurement led to an Article 78 complaint against HPD following the award of the Greenpoint Hospital redevelopment project. HPD awarded the project to Great American Construction / TNS Development over the community team of St. Nick’s Alliance and the Greenpoint Renaissance Enterprise Corporation (GREC), a coalition of forty local organizations formed in 1984 for the purpose of redeveloping the site.

The GREC team alleged that the RFP process was unfair, both in the process and evaluation of bids. GREC’s claim stated that the Great American Construction team was “coached” during the bidding process and allowed to amend its bid after it was submitted to better reflect the site’s needs. No other development team was given an opportunity to make changes to bids. Moreover, it was claimed the Great American bid would produce fewer affordable housing units and require more public subsidies.

The Court ultimately ruled in favor of HPD, not because the plaintiff’s claims were untrue but because City rules allow HPD complete discretion in selecting project sponsors “by any method permitted by Law.” The court found the RFP process was designed to be flexible, allowing for negotiations within the process and that “there is no legal requirement that a final contract must conform with the original RFP.”

Whether or not HPD acted appropriately and despite the court order in its favor, negotiations with the Great American team were officially halted following workers’ complaints on another Great American jobsite. The workers are due more than half a million dollars.

The specifics of the Article 78 complaint filed by GREC include:

- The Great American team submitted a proposal for significantly fewer affordable units than the St. Nicks team – 31 HUD Section 202 elderly units and 170 mixed income units compared to St. Nick’s 265 to 301 affordable units

³ Numbers Scribbled Here and There Added Up to \$600,000 in Bribes, US Says, The New York Times. October 7, 2011.

- Great American's original bid ignored the fact that projects are ineligible for Section 202 funds unless 40 units of affordable housing are being developed
- While all bidders were asked to update financial information following a two year delay in the bidding, only Great American was allowed to substantially change its bid, upping the proposed affordable units to 70 Section 202 apartments
- Freedom of Information documents show Great American's proposal was based on unsubstantiated funding sources including loans with no Letters of Interest from financial institution and \$4 million in Resolution A funding from the Borough President which was twice the Borough Presidents entire yearly allocation. Borough President Marty Markowitz wrote a letter to HPD stating, "I have not received any request for funding ... nor have I made any commitment to this organization. Your development staff should be familiar with my past ... appropriations to realize that the sums being requested exceed the funds I have provided to individual housing projects during my tenure."⁴
- TNS proposed receiving government subsidies in excess of \$36.9 million dollars (or over \$153,000 per unit), as compared to St. Nicks proposal of \$31.9 million dollars.

⁴ Borough President Marty Markowitz says cost is too steep for \$3.9 million housing project, Daily News. October 27, 2010.

The New York Times

October 7, 2011

Numbers Scribbled Here and There Added Up to \$600,000 in Bribes, U.S. Says

By WILLIAM K. RASHBAUM

In recent years, federal prosecutors say, Wendell B. Walters has spent a fair amount of time scribbling down numbers on little pieces of paper.

He did it in a coffee shop in Manhattan in 2002, when he wrote "250." He did it at a golf driving range in 2007; then, the number was "70." And he did it three other times, according to court papers unsealed Thursday in his federal bribery and racketeering conspiracy case.

In each instance, the papers say, Mr. Walters, who was an assistant commissioner at the city's Department of Housing Preservation and Development, was demanding a bribe.

Each number stood for how many thousands of dollars he wanted. When all was said and done, according to a search warrant affidavit, the numbers added up to something in the neighborhood of \$600,000.

Mr. Walters, 49, was suspended from his job after his arrest on Thursday and, with the six developers charged along with him in federal court in Brooklyn, faces up to 20 years in prison if convicted. His lawyer, Howard R. Leader, did not return a call seeking comment. All seven have pleaded not guilty.

As a result of the case, which has raised some questions about the oversight of Mayor Michael R. Bloomberg's \$8.5 billion affordable housing program, the housing agency is reviewing how it awards projects to developers and contractors and how they are vetted. The agency is the largest municipal developer of affordable housing in the United States.

"We are taking this very seriously and are examining the processes involved in this program," said an agency spokesman, Eric Bederman.



Robert Stolarik for The New York Times

Wendell B. Walters, second from right, a city housing official, leaving federal court Thursday after his arrest in a bribery case.

The rules the agency uses to award development projects and construction contracts appear looser than those used by other city agencies.

The rules say companies may be invited to bid through a process called requests for qualifications; the agency can choose from a list of approved companies; and it can select "a sponsor for a project by any method which H.P.D. determines will best further the purpose of the program." That includes, "in the discretion of H.P.D., by a direct designation of an entity judged by H.P.D. to be suitable for the task" — essentially, whomever the agency wants.

Mr. Bederman said that in the Neighborhood Entrepreneurs Program, which was the focus of the indictment, all projects had been awarded through requests for qualifications.

Mr. Walters's role in the process was still unclear on Friday. The indictment and a search warrant affidavit for Mr. Walters's home in Harlem and his office at the agency's headquarters in Lower Manhattan allege that he accepted approximately \$600,000 in bribes from contractors and developers in exchange for steering to them \$22 million worth of agency projects in Brooklyn, the Bronx and Queens. The affidavit even suggests that the Harlem home, on historic Strivers' Row, was itself a form of bribe from a developer he had helped and who has since died.

The Mason Tenders District Council of Greater New York and Long Island, which represents demolition and some construction workers, said Friday that it had little doubt that the agency was at fault. "The problem is how H.P.D. conducts its business and awards contracts," said its spokesman, Richard Weiss, in an e-mail. Some unions have been upset with the agency for awarding jobs to contractors that use nonunionized labor.

Officials have said that the investigation, involving several agencies, including the F.B.I., the city's Department of Investigation, the Internal Revenue Service, federal prosecutors in Brooklyn and the federal Labor Department, is continuing, and they will be combing through evidence they seized in the searches of Mr. Walters's home and office.

According to the court papers, Mr. Walters did not always receive what he asked for. Stevenson Dunn, a developer who was among those charged, told a cooperating witness that Mr. Walters had asked him for \$75,000 "as a bribe to help secure additional work with H.P.D.," according to the search warrant affidavit. But Mr. Dunn, a high school friend of Mr. Walters, paid only \$25,000 and pronounced Mr. Walters "greedy."

GREENPOINT HOSPITAL SITE: GREENPOINT/WILLIAMSBURG COALITION DEMANDS: REJECT BUILDER THAT CHEATED WORKERS OUT OF FAIR PAY

By Karl Benson

The contractor selected by the city to develop the largest remaining parcel on the site of the former Greenpoint Hospital was involved in a scandal for cheating construction workers out of fair pay, further calling the city's mysterious April, 2010 decision into question.

The builder, TNS/Great American, is being accused by workers of failing to pay over \$500,000 to construction laborers on projects funded by the city's Department of Housing Preservation and Development, the agency that awarded site control of the project to a partnership between TNS/Great American and Lemle & Wolff, a developer.

In light of the scandal, the Greenpoint Renaissance Enterprise Corporation, or GREC, a community coalition comprised of more than 40 local organizations, has called upon HPD to immediately rescind its decision. GREC had previously sued the city for its decision, alleging that its RFP process used to determine the developer favored a private developer over the non-profit GREC coalition. GREC's lawsuit is ongoing.

"HPD should refuse to go forward with this builder and work with the local community to develop the hospital site, as HPD has successfully done in the past," said GREC Chairperson Jan Peterson.

This revelation about TNS/Great American follows on the heels of the indictment of HPD Assistant Commissioner Wendell Walters, who is alleged to have steered projects to private developers in exchange for bribes totaling over \$600,000.

Karen Léader, Executive Member of the Cooper Park Residents Council, a GREC member organization, said, "The indictment of Assistant Commissioner Wendell Walters underscores a pattern of selecting private developers and then using the RFP process to justify a predetermined outcome. This is exactly what happened in the selection process for the Greenpoint Hospital site."

The New York Times has taken notice of HPD's dubious selection process as well. In an October 7th article, reporter William Rashbaum noted that Walters' indictment brought into question the entire HPD decision-making process in the disposition of publicly owned land and housing development programs.

"The rules the agency uses to award development projects and construction contracts appear looser than those used by other city agencies," he wrote.

"The rules say companies may be invited to bid through a process called requests for proposals; the agency can choose from a list of approved companies; and it can select 'a sponsor for a project by any method which HPD determines will best further the purpose of the program.' That includes, 'in the discretion of HPD, by a direct designation of an entity judged by HPD to be suitable for the task' – essentially, whomever the agency wants."

Beginning after the Greenpoint Hospital closed in 1982, GREC developed a community plan for the site. The plan garnered the endorsement of over 40 organizations, area elected officials, along with the unanimous support of Community Board 1.

Working in cooperation with HPD, GREC successfully renovated five of the seven buildings on the hospital campus. The last part of the community plan called for development of affordable housing, senior housing, and a senior health facility. However, HPD abruptly rejected the completion of GREC's community plan in 2005, without explanation.

After its surprising rejection of the community plan, HPD put the site up for RFP, and then proceeded to wait five years before making a decision on the site. From the beginning, area residents have been suspicious that the RFP was used simply to justify the predetermined selection of a for-profit developer.

These suspicions were confirmed when HPD documents surfaced showing that the agency had "coached" the application of the TNS/Great American and Lemle Wolff team, allowing it to amend it in the middle of the process to better reflect the site's needs. This development team was the only team allowed to amend its application, which shows clear-cut preferential treatment.

Furthermore, documents revealed after HPD's 2010 decision showed that the TNS/Great American plan needed a public subsidy than the GREC plan. This revelation directly contradicted HPD's claim that the TNS/Great American plan was more financially feasible.

David Dubosz, a member of St. John's Lutheran Church Social Action Committee, a GREC member organization, said, "It's outrageous that the public land upon which the former Greenpoint Hospital sits would be turned over to a private developer. The policy of the privatization of public land must be stopped – it is destroying both the sustainability and self-determination of our communities."

Dubosz added, "This is exactly what people are protesting at Occupy Wall Street. Why should we give away our public land to private developers? We call upon St. Nick's Alliance as our community developer to use the proceeds or development fees that would be generated from this project to help make important community improvements."

On the optimistic side, it is not too late for HPD to change course. St. Nick's Alliance, the anchor non-profit developer of the GREC coalition, has proposed to dedicate the developer fee for the project to local public needs like open space, community facilities, and further affordable housing in North Brooklyn.

Using development money of city-owned land as a way to support other public improvements has become a routine development structure in New York City in recent years.

Michael Arcati, Vice President of the Olive Street Condo Association, pointed to the renovation of Cooper Park as a possible project that would benefit from additional funding. The Parks Department has allocated \$2.2 million for the park, but that will only pay for the renovation of a small corner of the park.

"Using the developer fee from the Greenpoint Hospital development site will not only support the development of affordable housing and badly needed senior services, but it should also improve the park, which is directly across the street from the development site," Arcati said.

New York City Parks Department officials invited community leaders to help raise funds for the park, and offered to support community efforts.

Indeed, there is precedent for developers to fund parks and other community improvements. For instance, St. Nicks Alliance developed and maintained a park on Ten Eyck Street. This park had actually been promised by a private developer who had attempted to cheat the community out of a park it had promised in a development plan approved by HPD.

Borough President Marty Markowitz says cost is too steep for \$3.9 million housing project

BY ERIN DURKIN

DAILY NEWS WRITER

Wednesday, October 27, 2010

A developer tapped by the city to build affordable housing at the shuttered Greenpoint Hospital is counting on millions from Borough President Marty Markowitz - but Markowitz says there's no way he'll hand over that much cash.

Officials from TNS Development Group said in their 2009 application to the city they planned to get \$3.9 million from Markowitz to help fund the \$69 million, 240-unit project.

That was news to Markowitz.

"I have not received any request for funding ... nor have I made any commitment to this organization," he wrote in a letter this month to Housing Preservation and Development officials.

"Your development staff should be familiar with my past ... appropriations to realize that the sums being requested exceed the funds I have provided to individual housing projects during my tenure."

The Greenpoint Renaissance Enterprise Corporation, a group of local nonprofits snubbed for the contract, is suing to overturn the decision, citing the \$3.9 million funding gap and other alleged flaws in the TNS application.

HPD spokesman Eric Bederman declined to comment on specifics of the case because of the pending litigation, but said it's common for developers to list funding in their proposals that may or may not come through - and it's their responsibility to find another source of cash if it doesn't.

It took HPD more than three years to pick a developer for the site. But the selection of a for-profit company from outside the area quickly stirred controversy.

Opponents have accused Brooklyn Democratic boss Vito Lopez - who got thousands in campaign contributions from the developers - of meddling with the selection, which Lopez and the city denied.

In court papers quietly filed in August, Greenpoint Renaissance Enterprise Corporation charged the city's choice of TNS was an "abuse of discretion" that the developer was allowed to redo its application last year - adding another 39 apartments - and failed to turn in required financial documents.

"You can't give one person an unfair advantage and that's clearly what happened here," said Urban Justice Center lawyer Harvey Epstein, who represents GREC, which is set to hold a protest at the hospital site today.

TNS didn't return calls yesterday.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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In the Matter of the Application of:

: Index No. _____

: Date Purchased: _____

In the Matter of the Application of:
Greenpoint Renaissance Enterprise Corporation,
and St. Nicholas Alliance,

: NOTICE OF PETITION

:
: Petitioners,

- against -

RAFAEL CESTERO AS COMMISSIONNER
OF NEW YORK CITY DEPARTMENT OF
HOUSING PRESERVATION AND
DEVELOPMENT AND THE CITY OF NEW
YORK,

: Respondents,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

FILED

10110976

AUG 17 2010

COUNTY CLERK'S OFFICE
NEW YORK

PLEASE TAKE NOTICE, that upon the annexed Verified Petition of Ms. Janice

Peterson, et al., verified on August 17, 2010, and upon all the exhibits annexed hereto, an application pursuant to Article 78 of the CPLR will be made to this Court at the Motion Support Part at the Courthouse located at 100 Centre Street, New York, New York on the ____ day of September, 2010 at ____ a.m. or as soon thereafter as counsel can be heard, for a judgment and order:

- a) reversing, annulling and setting aside Respondent's April 23, 2010 determination to grant the Greenpoint Hospital site to TNS Development, on the grounds that such

determination violated applicable laws, regulations, was arbitrary, capricious and an abuse of discretion;

- b) ordering that the petitioners be awarded the RFP; ‘
- c) ordering such other and further relief as the Court deems to be just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 7804(c), answering papers, if any, must be served at least five (5) days before the return date of this petition.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 7804(e), Respondent HPD is directed to file with the Clerk of the Court a certified transcript of the record of the proceedings under consideration, together with the entire official file containing the records of Petitioners held by Respondents and referred to in the proceedings under consideration.

Dated: New York, New York
August 17, 2010

Respectfully submitted,

URBAN JUSTICE CENTER

By: 

Harvey Epstein, Esq.
123 William St. 16th Floor
New York, New York 10038
(646) 459-3012
Attorneys for Petitioners

To:
New York City Corporation Counsel
100 Church Street
New York, New York 10007
(212) 788-0303

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of:
Greenpoint Renaissance Enterprise Corporation,
and St. Nicks Alliance,

Index No. _____
Date Purchased: _____

Petitioners,

VERIFIED PETITION

- against -

RAFAEL CESTERO AS COMMISSIONNER
OF NEW YORK CITY DEPARTMENT OF
HOUSING PRESERVATION AND
DEVELOPMENT AND THE CITY OF NEW
YORK,

Respondent,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

FILED

1G110976

AUG 17 2010

COUNTY CLERK'S OFFICE
NEW YORK

Petitioners, Greenpoint Renaissance Enterprise Corporation (GRECO), et al.

("Petitioners"), by and through their attorneys at the Urban Justice Center, respectfully allege as follows:

PRELIMINARY STATEMENT

1. Petitioners bring this action pursuant to CPLR Article 78, seeking judicial review of and a judgment annulling and reversing the Department of Housing Preservation and Development's ("Respondent" or "HPD") administrative determination of April 23, 2010, granting a major development right of the Greenpoint Hospital Site ("Greenpoint Hospital") to TNS Development ("TNS") and denying Petitioners' the same, respectively, on the grounds that these determinations are arbitrary and capricious, constitute abuses of discretion, and were made in violation of law.

2. The Greenpoint Renaissance Enterprise Corporation (GREC) and St. Nicks Alliance (St. Nicks) have a long history among numerous mayoral administrations in which they have agreed to allow petitioners to develop the Greenpoint Hospital site. HPD's failure to honor that commitment as well as their failure to follow a fair process for all applicants is the basis of this article 78.

PARTIES

3. Petitioners two community based not-for-profit organizations based in Williamsburg Brooklyn. St. Nicks Alliance (St. Nicks) primary location is 11 Catherine Street, 3rd Floor, Brooklyn, New York 11211. Greenpoint Renaissance Enterprise Corporation's (GREC) primary office located at 249 Manhattan Avenue, Brooklyn, New York, 11211, is a consortium of community and local non profit corporations who were founded in 1984 sole for the purpose of planning for and facilitating the redevelopment of the former Greenpoint Hospital Complex. St. Nicks Alliance is one of the member organizations of GREC and which was designated by GREC to develop housing and health services on the former hospital campus. St Nicks is an experienced and highly reputable developer of affordable housing and community facilities for low income and working poor residents.

4. Respondent Department of Housing Preservation and Development of the City of New York (herein "HPD") is the city administrative agency responsible for the administration of the city housing policy and disposing of city land for the development of housing and community facilities. Upon information and belief, HPD is a public corporation organized under the laws of the State of New York, with its principal place of business located at 100 Gold Street, New York, New York 10038. Rafael Cestero is the Commissioner of HPD.

VENUE

5. Venue properly lies in New York County pursuant to CPLR 506(b) and 7804(b), as it is the county where Respondent's principal place of business is located.

FACTS

6. Petitioners are community-organizations dedicated to overseeing broad community interests in the former Greenpoint Hospital site meet the needs of local residents and the city of New York. St Nicks Alliance is a housing development organization dedicated to the creation and preservation of decent affordable housing for low income and working poor residents of Williamsburg/Greenpoint Brooklyn New York.

7. For nearly 30 years since the closing of the Greenpoint Hospital, both Petitioners have been involved in a community campaign to building affordable housing and health care services on the site. In response to a City RFP GREC submitted the community plan for the complex in 1984 calling for affordable housing, health care and a more appropriated sized homeless shelter to be developed on the Campus.

8. However, despite the RFP the city moved homeless men into the vacant buildings in violation of its own ULURP process. By the early 1990's the controversy escalated as the entire campus was converted to a homeless shelter serving 1,150 men facility on the Greenpoint Hospital site. The city's failure to follow its own public review law and act on the outcome of the RFP resulted years of negotiations and eventual litigation.

9. In 1993, the city entered into an agreement to settle a lawsuit which allowed St. Nicks and Neighborhood Woman of Greenpoint/Williamsburg to develop 45 affordable housing units, create community center space and reduce the size of a homeless shelter on the hospital campus. (See Exhibit "A"). However, the entire site was not developed at this point.

10. Petitioners continued to work with the City to develop the rest of the site for community use. Initially a skilled nursing facility for the elderly and later affordable housing was proposed for the vacant land and building.

11. Community Board 1 in Brooklyn (Board where the site is located) supported GREC's appeal to give St. Nicks site control for the development of a fully financed \$38 million skilled nursing home.

12. In January, 2006, HPD then Deputy Commissioner Rafael Cestero met with St. Nicks staff to discuss further development of the Greenpoint Hospital Site if the then NY State Health Departments temporary moratorium on Nursing Homes was continued. Mr. Cestero indicated that HPD would likely solo source the site to St. Nicks. Preliminary plans were presented by St Nicks architect to HPD at that time.

13. However, in spring 2006 HPD changed their opinion on the site and informed St. Nicks and GREC that HPD would create a request for proposals ("RFP") for the site and claimed that HPD would RFP all of its disposable properties.

14. HPD issued a Request for Proposals on February 2, 2007 for three sites in Greenpoint-Williamsburg, Brooklyn ("The RFP"). One site was Site 3, Greenpoint Hospital, Brooklyn, located at Block : 2885, part of Lot 1 – This 59,598 Square foot site along Maspeth Avenue at the corner of Debevoise Avenue is a part of the former Greenpoint Hospital health facility. (See Exhibit "B").

15. In page 19 of the RFP it states: REQUEST FOR PROPOSALS PROCESS A.
SUBMISSION

"After submission, HPD will not accept additions or changes to the proposals. Upon review however, HPD at its discretion, may notify a Respondent that additional information or clarification is necessary."

16. St. Nicks responded with a proposal that included two options. (See Exhibit "C") One had 265 affordable apartments and the second alternative had 302 affordable apartments.

17. This proposal relied on city and state financing as well as differed developer fees and equity put into the project by St. Nicks. (See Exhibit "C")

18. Upon information and belief, TNS also submitted a proposal that included 201 units. Only 31 units were to be developed for low income senior housing (See Exhibit "D"). Upon information and belief, that proposal had substantial less units of affordable housing than every other proposal submitted.

19. Upon information and belief, the proposal included 170 units of mixed income housing and 31 units of housing for low income elderly. However, the elderly housing proposal called "Olive Park" was not a viable proposal since it would be funded by federal Section 202 HUD dollars and HUD does not fund projects less than 40 units of section 202 housing.

20. HPD took no action on the proposals submitted for over two years after the proposals were submitted.

21. Upon information and belief, political pressures were being put on HPD to make decision on this proposal.

22. However, on July 29, 2009 HPD sent all applicants a letter asking them to submit updated information based on changes in market conditions. (See Exhibit "E"). Said letter sent to all applicants only requested that Tab G- Project Financing be updated. This was clear

instructions to all applicants that they were only allowed to update Tab G- Project Financing. (See Exhibit "F").

23. However, in direct violation of the direction from HPD in their July 29, 2009 letter, TNS not only updated the project finances, they modified their proposal including but not limited to changing the number of apartment units they were developing. (See Exhibit "F"). The request by HPD in 2009 asked for an update of TAB – G project finances. TNS submitted a substantial change in program by more than doubling the number of elderly housing units to 70 apartments.

24. In reality, TNS submitted a totally new proposal. Without notice or knowledge to any other applicant, HPD accepted TNS's new submission, which changed their application completely.

25. On April 23, 2010, HPD announced it awarded the development of the Greenpoint Hospital site to TNS. (See Exhibit "G").

26. On or about April 28, 2010, St. Nicks requested a review of the determination that they were not being awarded the site. (See Exhibit "H").

27. On or about July 26, 2010, GREC and St. Nicks met with the commissioner of HPD and informed petitioners that the reason they did not get awarded the RFP is because TNS had "put more equity into the project." At this meeting, St. Nicks asked for a written determination that they were not being awarded the site. Such letter has not been received as of the date of this filing.

28. On or about August 5, 2010, St. Nicks received documents in response to a freedom of information request to HPD. In that freedom of information disclosure, St. Nicks received a copy of TNS's amended submission on September 11, 2009.

29. In this new submission, TNS submitted financing numbers that were not fiscally sound. Their response to HPD Resubmission Request was incomplete and should not have been received for the designation. In 2009 TNS didn't provide the required Letters of Interest from financial institutions to support their proposal and demonstrate that they could get pricing for loans and investments as detailed in Tab G. (See Exhibit "F")

30. In addition, TNS stated that they would have .80 cents for tax credits, not possible based on market conditions at the time of their submission. (See Exhibit "F").

31. Moreover, 4 million dollars Reso A money from the Borough President, when he only gets 2 million dollars a year in funding.

32. Furthermore, TNS claimed to contribute only 1.1 million dollars in equity, while charging as builders an additional 5 million dollars in construction costs to complete a 170 units building compared to St. Nicks' 175 units building. The equity TNS would be contributed to the project would be more than offset by the additional profits they gained through higher construction costs.

33. Fourth, TNS proposed receiving government subsidies in excess of other applicants - 36.9 million dollars, an average of \$153,800 per unit as compared to St. Nicks proposal of 31.9 million dollars, \$120,000 per unit.

34. In page 23 of the RFP it states: B. COMPETITIVE SELECTION CRITERIA,
Affordability

"Proposals that meet the permanent affordability requirements with the least amount of subsidy will be ranked highest under this criteria"

35. TNS failed to include the required number of parking spaces required by zoning and thus would not be in compliance with design requirements under the RFP and therefore failed to meet the requirements set forth in the proposal. (See Exhibit "F")

36. Nothing in TNS's proposal (or amendment) stated that the affordable apartments would remain affordable in perpetuity as required in the RFP.

37. Moreover, HPD required all applicants to submit an alternative source of funding for any competitive source noted in the proposal. In the original 2007 response and the 2009 resubmission, TNS' proposal of for senior housing (31 units and 70 units respectively) failed to set forth any alternative if the competitive source of senior housing funding, Federal HUD dollars, are not received.

38. Having exhausted all levels of administrative review with Respondent, Petitioners appeal to this Court for the review and reversal of Respondent's April 23, 2010 final determination and order.

ARGUMENT

I. RESPONDENT'S APRIL 23, 2010 FINAL ADMINISTRATIVE DETERMINATION APPROVING THE TNS PROPOSAL IS IN CLEAR CONTRAVENTION OF LAW AND POLICY

A. HPD violated the requirement of "regularity" in taking official action

39. The question presented is whether the government was arbitrary and capricious or whether there is a rational basis for governmental action.

40. HPD has broad discretion to either RFP a site or not Rules of the City of New York Title 28 Section 30-03.

41. Once HPD decided to RFP the site, it is required to treat all applicants fairly. *Hunts Point Terminal v. NYC EDC*, 13 Misc.3rd 988, 822 N.Y.S.2nd 839 (2006) citing *Madison Sq. Garden L.P. v. New York Metro Transp. Auth.* 19 A.D.3d 286, 799 N.Y.S.2d 186; *Tri- State Aggregates Corp v. Metropolitan Transp. Auth.* 108 A.D.2d 645, 485 N.Y.S.2d 754 (1st Dept. 1985).

42. Here, HPD allowed TNS to submit a modification of their proposal far beyond what it allowed other applicants. All applicants were told they could update their financials in tab G. (See Exhibit "G"). However, TNS not only updated their financials, they submitted entirely new proposals increasing the number of senior apartments from 31 to 70 increasing the overall apartments from 201 to 240 in direct violation of the rules for fair competitive bids.

43. HPD accepted a new proposal from TNS in direct violation of their July 29, 2009 letter and in violation of their requirements of good faith and fair dealings with all applicants who responded to this RFP.

44. Therefore, HPD acted arbitrarily and capriciously and their determination should be reversed.

B. HPD Failed to Use a Clear and Consistent Process for All Applicants

45. Following HPD protocol to evaluate all proposals fairly and equally, HPD failed to follow equal and consistent processes.

46. Upon information and belief, HPD could not have followed such action since TNS' proposal had serious delinquencies that raise serious questions about it viability.

47. Therefore, it is impossible to believe that, TNS' application was viewed in the same light as the other proposals.

48. TNS proposal failed to include the required number of parking spaces required under zoning and needed consistency under the RFP.

49. TNS's high construction cost belies the argument that TNS put equity into the project.

50. TNS used a greater amount of government subsidies in their financing and should have been ranked lower than other proposals with fewer totals and per unit amount of subsidies.

51. TNS failed to include alternative sources of funding for their senior project if they failed to obtain Section 202 senior housing dollars from the federal government.

52. Finally, TNS makes no mention of the housing being permanent affordable as required in the RFP.

53. Therefore, HPD acted arbitrarily in reviewing said proposals and its determination must be reversed.

CONCLUSION

54. New York laws require that all applicants be treated fairly and equally, and Respondent erroneously granted the RFP to TNS in the face of a submission clearly established provided no rational basis for such finding.

55. Accordingly, Respondent's determinations of April 23, 2010 must be annulled and reversed.

PRIOR APPLICATION

56. No prior application has been made for the relief requested herein.

RELIEF REQUESTED

WHEREFORE, Petitioners request that this Court enter an Order:

- a) reversing, annulling and setting aside Respondent's April 23, 2010 on the grounds that such determination violated applicable laws, regulations, was arbitrary, capricious and an abuse of discretion;
- b) ordering that petitioners be awarded the RFP ; and
- c) ordering such other and further relief as the Court deems to be just and proper.

Dated: New York, New York
August 17 2010

Respectfully submitted,

URBAN JUSTICE CENTER

By: 

Harvey Epstein, Esq
123 William St. 16th Floor
New York, New York 10038
(646) 459-3012

Attorneys for Petitioners

Index No.:

SUPREME COURT OF THE CITY OF NEW YORK
NEW YORK COUNTY

GREC, et al.

Petitioners

-against-

DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT
ET. AL.,

Respondent.

Notice of Petition and Petition

BY: Harvey Epstein, Esq.

Office and Post Office Address, Telephone
URBAN JUSTICE CENTER
Harvey Epstein, Esq.
123 William Street, 16th Floor
New York, NY 10038
Tel. (646) 459-3012
Attorneys for Plaintiffs

To: CLERK OF THE COURT
100 Centre Street
New York, NY

Dated,

order compelling HPD to accept their proposal to develop the site following its 2007 Request for Proposals (RFP).

L. FACTUAL BACKGROUND

GREC is a consortium of community and nonprofit organizations founded in 1984 for the purpose of planning and facilitating the redevelopment of the former Greenpoint Hospital Complex. St. Nicks is a community nonprofit organization in the Williamsburg section of Brooklyn that develops affordable housing and community health services for low-income and working-poor residents. (Pet.).

Respondent Rafael Cestero, as Commissioner of HPD, heads the administrative agency responsible for administering New York City's (City) housing policy and the disposal of City land for the development of housing and community facilities. (*Id.*).

In February 2007, as part of Mayor Bloomberg's New Housing Marketplace Initiative, intended to construct or rehabilitate 165,000 housing units by 2013, HPD issued an RFP for the development of affordable housing, with potential funding available through various city, state, and federal programs designed to subsidize construction and enhance overall project affordability. (Ans., Exh. 1). Developers were invited to submit proposals for residential and/or mixed-use developments on three separate City-owned sites in Greenpoint and Williamsburg, Brooklyn. (*Id.*). Each applicant was required to assemble a development team and undertake the design, financing, construction, and marketing of the proposed project. City would then convey the site to the selected developer for a nominal purchase price per tax lot of \$1. (*Id.*).

The instant action addresses a proposal submitted by St. Nicks for one of the three sites, described in the RFP as a portion of the former Greenpoint Hospital site and denominated as Site

3 (premises). (*Id.*, Exhs. 1, 2). The site includes a vacant building, a former four-storey nurses' residence at the corner of Maspeth and Debevoise Avenues, and an adjacent parcel of vacant land running along Maspeth Avenue. (*Id.*, Exh. 1).

The submission deadline, originally April 18, 2007, was extended to May 9, 2007, on which date St. Nicholas-Briarwood LLC (St. Nicks), submitted a proposal. (*Id.*, Exhs. 1, 2). Saint Nicholas Neighborhood Preservation Corporation and Briarwood Organization each owned 50 percent of St. Nicks. (*Id.*, Exh. 2). GREC is not named as a party or joint venturer in this proposal, nor did GREC submit its own proposal to develop the premises. (*Id.*). The application reflects that the proposal does not include a joint venture to develop the site. (*Id.*).

St. Nicks submitted two options to develop a portion of the premises (Brooklyn Block 2885, part of Lot 1): (1) the construction of 265 affordable apartments which would preserve the existing building on the premises and include a 90-unit senior housing facility, plus 175 units of mixed income rental housing and a new geriatric health care facility; or (2) the construction of 302 affordable apartments. (*Id.*). The proposals would rely upon both City and State financing.

TNS Development Group Ltd., Lemle & Wolff, Inc., and Beth Abraham Health Services (collectively, TNS) also submitted a proposal to develop the premises. (*Id.*, Exh. 3). It sought to construct a nine-storey building containing 170 mixed-income rental units, a street-level commercial space and the rehabilitation of an existing four-storey former hospital building into 31 senior rental units. (*Id.*). HPD subsequently invited TNS to modify the senior housing component of its proposal, and in December of 2007, TNS provided an addendum, increasing the number of senior housing units to 70 by decreasing the size of each unit but maintaining the square footage as set forth in the original proposal. (*Id.*, Exh. 5).

As a result of the collapse of several large financial institutions in 2008 and 2009, HPD was required to cut its capital budget by 30 percent in September 2008, and by another 20 percent in April 2009. (Ans.). In light of these new developments, each developer complied with HPD's request that it submit revised financial proposals by September 11, 2009. (*Id.*, Exhs. 6, 7, 8).

On April 23, 2010, HPD issued a press release announcing its selection of TNS's proposal to build 240 units of affordable housing and its willingness to enter into negotiations for the disposition and development of the premises. (*Id.*, Exh. 14). On April 28, 2010, petitioners sought a review of HPD's determination. On July 26, 2010, petitioners met with HPD and learned that St. Nicks's proposal was considered and rejected in favor of TNS's proposal, because TNS proposed to put more equity into the project, and HPD's experts determined that St. Nicks's reliance on a greater percentage of competitive funding sources constituted a comparative weakness. (*Id.*, Exh. 16). TNS, moreover, received the highest scores among the competing proposals received pursuant to the RFP's competitive selection criteria. (*Id.*, Exh. 9). Petitioners thus commenced this proceeding.

II. CONTENTIONS

Petitioners contend that HPD's determination is arbitrary and capricious because:

(1) TNS's proposal was in clear contravention of law and policy; (2) HPD failed to use a clear and consistent process for all of the proposals and applications submitted to develop the premises; (3) HPD's subsequent negotiations with TNS, after May 9, 2007, provided TNS with an unfair advantage in the process; and (4) HPD's solicitation of a modified proposal from TNS was contrary to the terms and conditions of the RFP. (Pet.).

In its answer, HPD denies that petitioners are entitled to vacatur of its determination

because: (1) GREC lacks standing to bring this proceeding; (2) the agency has not taken a final administrative action, and, thus, the petition is not ripe for judicial review; and (3) HPD's selection of TNS's proposal was rational, fair, and in compliance with the requisite laws. (Ans.; Respondents' Mem. of Law, dated Jan. 7, 2010).

In reply, petitioners maintain that HPD's decision to continue post-bid negotiations with TNS was a final, binding decision, as they were injured by not being chosen as developer of the premises, and further administrative action will not ameliorate their injury, as their only recourse will be to challenge the disposition of the site, which will not restore St. Nick's candidacy as a potential developer. (Reply). They also assert that GREC has standing, as St. Nick's is one of its members. (*Id.*).

III. ANALYSIS

A. Standing

To establish standing, an association or organization "must show that at least one of its members would have standing to sue." (*Matter of Citizens Emergency Comm. to Preserve Preserv. v Tierney*, 70 AD3d 576, 576 [1st Dept 2010]). In land-use matters, a "petitioner must show that one or more of its members – as distinct from the general public – has suffered injury in fact, and must demonstrate that the injury falls within the zone of interests protected by the legal authority being invoked." (*Id.*; see also *Matter of Save the Pine Bush, Inc. v Common Council of the City of Albany*, 13 NY3d 297, 304 [2009]).

GREC is neither a named party nor a joint venturer in St. Nick's May 2007 proposal, and it did not submit an independent proposal to develop the site. Thus, although it is alleged that GREC is dedicated to overseeing community interests and preserving affordable housing in the

former Greenpoint Hospital site, its interest in the site is distinct from an injury. (*See Matter of Citizens Emergency Comm.*, 70 AD3d at 576 [organization had no standing where its members only had interest in preservation, as an interest is distinct from an injury and does not confer standing]). GREC has thus failed to demonstrated that it has a “legally cognizable interest in the property.” (*See Matter of Lee v New York City Dept. of Hous. Preserv. and Dev.*, 212 AD2d 453, 454 [1st Dept 1995] [organization had no standing as it failed to show legitimate entitlement to property]).

Moreover, there is no allegation that, as a result of HPD’s rejection of St. Nicks’s proposal to develop the premises, GREC suffered an injury from the proposed transfer of the property or that HPD’s rejection impacted it differently than it did the general public. Thus, GREC has not established standing here.

St. Nicks, however, indisputably has standing to challenge HPD’s determination.

B. Ripeness

A “CPLR article 78 proceeding against a public body . . . must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner.” (*Matter of Rocco v Kelly*, 20 AD3d 364, 365-66 [1st Dept 2005]). An administrative determination is final and binding once it “has its impact upon the petitioner who is thereby aggrieved.” (*Matter of Edmead v McGuire*, 67 NY2d 714, 716 [1986]). The agency must have arrived at a definite position on the issue inflicting actual injury, and the injury may not be significantly ameliorated either by further administrative action, or steps taken by the complaining party. (*Matter of Comptroller of City of N.Y. v Mayor of City of N.Y.*, 7 NY3d 256, 262 [2006]; CPLR 217 [1]).

On April 23, 2010, HPD rejected St. Nicks's proposal in favor of one submitted by TNS. On April 28, 2010, St. Nicks requested a review of HPD's determination, and sought reconsideration of its decision to move forward in negotiations with TNS. HPD met with St. Nicks on July 26, 2010 to reconsider its determination, but ultimately informed petitioner that it would indeed move forward with TNS's proposal to develop the premises. On July 26, 2010, that determination became final and binding as HPD would not reconsider St. Nicks's proposal. HPD's determination reflects a definite position on the issue which inflicted actual injury upon St. Nicks, and there is no evidence that the injury may be significantly ameliorated by further administrative action or steps taken by the complaining party. (See *Matter of Comptroller of City of N.Y.*, 7 NY3d at 262 [where comptroller objected to City contract, mayor's determination that comptroller must register contract final and binding as of date of registration, as comptroller's only recourse was to bring suit, and no further ameliorative administrative action expected]). For these reasons, St. Nicks has established its entitlement to judicial review.

C. HPD's authority

HPD is responsible for all City functions relating to the rehabilitation, maintenance, alteration, and improvement of residential buildings and privately owned housing. (NY City Charter § 1802[1]). As set forth in the City Charter, the duties of the commissioner include:

all functions of the city, and all powers, rights and duties as provided by federal, state or local law or resolution, relating to slum clearance, slum prevention and urban renewal; neighborhood conservation; prevention and rehabilitation of blighted, substandard, deteriorated or unsanitary areas, and publicly-aided and public housing, including the regulation of rents in housing built with state or local financing, except housing under the jurisdiction of the New York City housing authority.

(NY City Charter § 1802[3]). In fact, HPD is charged with securing sponsors for urban renewal projects and programs "by any method permitted by Law which it determines will best meet the

Project's objectives and the City Housing Goals, including, but not limited to, direct negotiation, RFQ, RFP, competitive bidding, public bidding, auction, selection by entities other than the Agency, and application." (28 RCNY § 33-03[a]).

1. Standard of review

Judicial review of an administrative agency's decision is limited to whether the decision "was made in violation of lawful procedure, was affected by an error of law or was arbitrary or capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed." (CPLR 7803[3]). In reviewing an administrative agency's determination as to whether it is arbitrary and capricious under CPLR Article 78, the test is whether the determination "is without sound basis in reason and . . . without regard to the facts." (*Matter of Pell v Bd. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]; *AWL Indus., Inc. v Triborough Bridge & Tunnel Auth.*, 41 AD3d 141, 142 [1st Dept 2007]; *Matter of Kenton Assoc. v Div. of Hous. & Community Renewal*, 225 AD2d 349, 349 [1st Dept 1996]). Moreover, the determination of an administrative agency, "acting pursuant to its authority and within the orbit of its expertise, is entitled to deference, and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record." (*Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 [1st Dept 2007], *aff'd* 11 NY3d 859 [2008]).

2. Rational basis for HPD's determination

Here, TNS's proposal not only met the threshold requirements under the RFP, but

received the highest scores under the selection criteria, and HPD's experts determined that reliance on a greater percentage of competitive funding sources contained in the St. Nicks proposal rendered that proposal relatively weaker than TNS's, a significant factor in assessing the overall financial feasibility of each proposal.

III. Noncompliance with bid specifications

"[A]n RFP is a more flexible alternative to competitive bidding," and thus permits ongoing negotiations and alterations to RFPs and any subsequent proposals. (*AWL Indus.*, 41 AD3d at 142). However, "even in the stricter context of competitive bidding, an agency has the authority to waive noncompliance with bid specifications if such noncompliance constituted a mere irregularity and it was in the agency's best interest to do so." (*Id.* at 143). And, "[w]here the judgment of an agency involves factual evaluations in the area of that agency's expertise and [it] is supported by the record, such judgment must be accorded great weight and judicial deference." (*Id.* at 142).

Here, HPD's judgment is soundly supported by the record.

IV. Fairness of process

While it is true that all who submit proposals must be treated fairly, there is no legal requirement that a final contract must conform with the original RFP. Rather, HPD is authorized to "negotiate and dispose of any Site on terms other than those set forth in the RFP" (28 RCNY § 33-03[d][7][iv]). Although TNS's proposal of underground parking spaces does not comply with the RFP, the record reflects that HPD, pursuant to 28 RCNY § 33-03(d) and section VII of the RFP, determined that TNS's proposal of 49 Parking spaces adheres closely enough to the zoning requirements, and that further adjustments may be brought into compliance without additional design or financing implications. In the end, HPD determined that TNS would only be

required to provide approximately five additional parking spaces in order to comply with applicable zoning ordinances, and even if TNS's submission deviated from the specifications of the RFP, HPD properly considered the deviation tangential and waived it in light of TNS's experience and the savings. (*AWL Industries, Inc.*, 41 AD3d at 143).

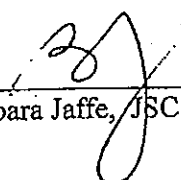
V. CONCLUSION

Accordingly, it is

ORDERED and ADJUDGED, that the petition is denied in its entirety and the proceeding is dismissed.

This constitutes the decision and judgment of this Court.

ENTER:


Barbara Jaffe, JSC

BARBARA JAFFE
J.S.C.

DATED: June 13, 2011
New York, New York

JUN 13 2011

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Financial Mismanagement

In 2011 the NYC Comptroller's Office released the results of two audits of HPD, which cumulatively identified almost \$28 million in improperly managed funds. HPD kept \$9.8 million in unused funds from expired contracts earmarked for capital expenditures under HPD's Relocation Shelter account. These funds should have been returned to the City treasury, according to a City Comptroller November 2011 audit. The audit also showed that HPD inappropriately used a portion of the funds to supplement its operating budget thereby evading the City's budgetary process.

The second audit released in December 2011 concerned the misappropriation of \$17 million unused Article 8A Loan program funds. The audit reports that since 2007 HPD directed these funds and accrued interest from different loan programs to an HPD account, when the money should have been returned to the City. The account was originally designed to hold a zero balance and used only as a conduit for the City to distribute Article 8A Loan payouts, which remain in the City treasury before use.

The account has now swelled to \$17 million. The Comptroller's report states that, "HPD has built up a huge reserve which may not be subject to the City's budget process." HPD does not have a breakdown of the funding sources that compose the balance. At least some of these funds and interest originate from the Neighborhood Entrepreneur Program, which is embroiled in controversy regarding the corruption indictment against Wendell Walters and his alleged use of the NEP program in fraud and bribery schemes.

Another HPD initiative that has proven economically inefficient is the Alternative Enforcement Program. Started in 2007 under the auspices of Shaun Donovan, the program was meant to target 200 buildings a year with the highest number of housing violations. Landlords are ordered to make repairs and if no progress is made in four months. The City will perform repairs and bill for the work.

To date HPD has spent a total of \$33 million on the program, \$23 million of which has been on repair work. HPD has only recouped only \$10 million from landlords. The price of the program increased from \$3 million in fiscal 2008 to \$11 million in fiscal 2010.

Increases costs and revenue loss would be understandable if permanent repairs were being made. Nearly 50 percent of the first 400 building enrolled in the program in 2007 and 2008 still make the annual list of properties needing repair because of continuing serious violations or failure to repay the city. The Daily News reported that four years after the over half a million dollars in repairs were completed at 935 Kelly Street, Bronx, the building has again fallen into disrepair. At the time of the report, the 32-unit building had 171 health and safety violations. The Daily News reports, that this is "emblematic of promises that were made and broken to thousands of residents in similarly decrepit buildings."⁵

⁵ City's worst-of-worst buildings dying for a fix and never make it out of rehab, Daily News. November 26, 2011.

CASE STUDY

The City's worst building in 2011, according to Public Advocate Bill DeBlasio's annual list released in December, was 245 Sullivan Place in Crown Heights. HPD permitted the dilapidation of the property and simultaneously rewarded the City's "second worst" landlord, James Crossman, with loans, abatements and grants.

This building underwent renovations funded by loans provided by HPD through its Article 8A Loan Program and Lead Hazard Reduction Program, valued at about \$1.4 million and \$430,000 respectively. The building is still benefiting from the HPD-administered J-51 tax exemption and abatement program. The abatement is certified by HPD in consideration of the repair work funded by HPD. Meaning as the building falls into disrepair despite nearly two million dollars in public investment through HPD, the landlord will continue to reap the benefit of the 20-year tax abatement at an annual cost of about \$30,000 to taxpayers.

HPD recognized conditions in the building continued to be some of the worst in the City and two years after HPD first invested public funds into 245 Sullivan Place, the agency enrolled the building on the 2011 Alternative Enforcement List. At end of year 2011, 245 Sullivan Place still had 654 open Housing Code violations resulting from crumbling ceilings, exposed wiring and lack of electricity, hot water and heat. Additionally during the two years since the Article 8A Loan was granted, while repair work fell apart and Housing Code violations mounted, a rider in the mortgage between HPD and the owner granted the agency the power to remove the current managing agent.

City's worst-of-worst buildings dying for a fix and never make it out of rehab

NYC spends millions but falls short in high-profile effort to punish city's worst slumlords

BY BENJAMIN LESSER & TINA MOORE

Saturday, November 26 2011, 7:03 PM

IN 2007, housing officials named 935 Kelly St. in the Bronx one of New York's "worst of the worst" slum buildings and targeted the five-story walkup for major repairs.

Four years later, having invested \$585,000 to make the building livable, 935 Kelly St. is again a wreck. Stairway windows are broken. The lobby is scarred with graffiti. The front door had no lock last week, and drug dealers terrorize residents.

"When it rains, the hallways rain too," said Joan Gardner, 51, who has lived on the fourth floor for two years.

The city's failure to maintain long-term housing improvements for Gardner and her fellow tenants is emblematic of promises that were made and broken to thousands of residents in similarly decrepit buildings.

The Department of Housing Preservation and Development has spent \$33 million on an "alternative enforcement program" that was designed to crack down on the slumlord owners of the most rundown tenements.

Under the plan, the city identifies 200 buildings a year that have a high number of violations and orders landlords to make repairs within four months or face penalties. If the owner balks, the city does the repairs and bills for the work.

At the program's inception, then-commissioner Shaun Donovan, who is now President Obama's housing chief, vowed the city would "not tolerate unsafe conditions for tenants." His agency promised to commit enough inspectors to "ongoing monitoring" to make sure buildings "don't fall back into disrepair."

Often, that's exactly what happened.

In the campaign's first two years, the department targeted 400 buildings totaling more than 1,200 apartments. Nearly half — 45% — are still in the program because they still have a high number of serious violations or failed to repay the city for repairs.

In addition, the city has recovered from landlords only \$10 million of the \$23 million spent on repairs even as the cost of renovations rose from \$3 million in fiscal 2008 to \$11 million in fiscal 2010, according to the city's Independent Budget Office.

Elizabeth Brown, a policy analyst at the IBO, called the campaign a "very expensive" program with "mixed" results.

Councilwoman Letitia James (D-Brooklyn), a sponsor of the Safe Housing Law that created the effort, said the city fell short of goals by not devoting enough inspectors to make sure the buildings stay safe for tenants. "I would love to hire additional inspectors," James said.

HPD Deputy Commissioner Vito Mustaciuolo said he believed the program had become more effective because the Council strengthened the law to empower the city to slap liens on buildings and to work out repayment plans with landlords. The city is trying to use such a lien to recover \$156,000 spent on repairs at 2097 Webster Ave. in the Bronx. Put in the program in 2008, the eight-unit building had 85 open violations deemed serious as of last week.

Vincent Adams, 60, and Deborah Adams, 48, say they began confronting horrors after moving into the Webster Ave. building last December. The living room ceiling collapsed, followed by the ceiling over the toilet. Then mold patches shaped like flowers began to appear in the bathroom.

"Nobody should have to live like this," Deborah Adams said.

As for 935 Kelly St., the 32 units have 171 open health and safety violations deemed "serious." The building owner, Kelly Street Realty, has now lost it to a court-appointed receivership and could not be reached for comment.

Liu finds \$17M is not where it belongs

TINA MOORE

Tuesday, December 27, 2011

The Bloomberg administration is sitting on millions of dollars that should be returned to the city's general fund, a scathing new audit claims.

Controller John Liu's office says it found nearly \$17 million in a Department of Housing Preservation and Development account that has little oversight.

"This money belongs in the city treasury and not under the proverbial mattress," the embattled controller said in a statement.

The account was created in 2007 with \$2.4 million from the 8A Loan Program, which is intended to repair dilapidated apartment buildings.

But it was used instead as storage for a large reserve of cash from various programs, and by October 2011, some \$16.9 million had been amassed.

The 8A Loan money represents only a fraction of the total in the account today, the audit says. "Due to HPD's insufficient record-keeping, the exact breakdown of the funding sources and programs that compose the balance is unknown," the audit declared.

An HPD spokesman said the agency has been handling the account "appropriately" and in consultation with the city Office of Management and Budget.

"In operating the account in this manner, we ensured that the funds remained under the city's control," Eric Bederman said in a statement. He added that "HPD has been providing annual statements" to the controller.

However, ledgers between July 1, 2009 and Oct. 31, 2010 show six deposits, totaling \$553,571, and nine withdrawals, totaling \$199,802, with no description of the source or destination for each transaction, the audit says. The audit says HPD later provided supporting documents, but that the record-keeping could lead to the misuse of funds.

For instance, the audit states, HPD issued nine \$50 checks from the account but did not disclose the recipients of the funds. A review showed the payments were stipend checks made to Section 8 Resident Advisory Board members — unrelated to the account's purpose, the audit says. HPD later reimbursed the funds.

In its response to the Controller's audit, HPD agreed to release the funds and determine the exact composition of the account.

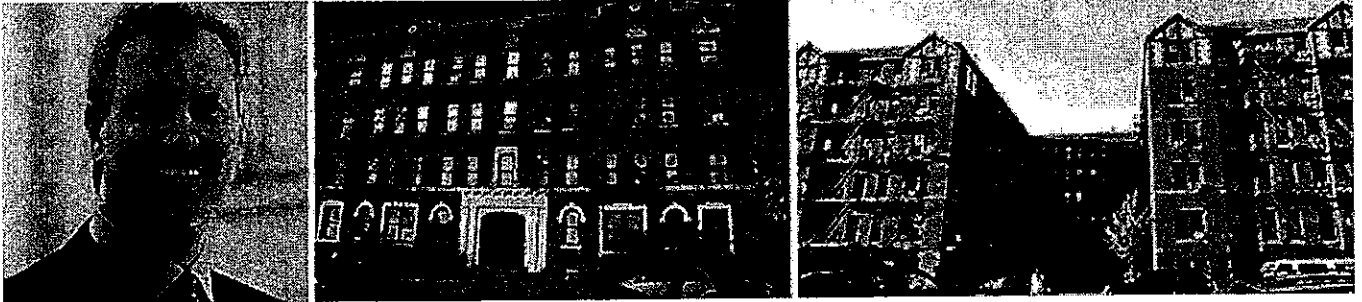
Liu's fund-raising for his 2013 mayoral run is being investigated by the feds after they indicted one of his fund-raising intermediaries for recruiting straw donors to skirt campaign finance laws.

THE REAL DEAL

NEW YORK CITY REAL ESTATE NEWS

Brooklyn building, Uptown landlord top de Blasio's list of city's worst

December 27, 2011 @ 9:44 AM



From left: Public Advocate Bill de Blasio, 245 Sullivan Place and 78 Post Avenue (building credits: PropertyShark)

Public Advocate Bill de Blasio released his third annual list of the city's worst buildings and landlords meant to shame the landlords into improving conditions, according to the New York Daily News.

The worst building is 245 Sullivan Place in Crown Heights. The 40-unit rental building has 654 open violations thanks to crumbling ceilings, exposed wiring and a lack of electricity, hot water and heat in certain apartments. It's been owned by James Crossman since 1971, public records show, and the News reported he is now 92 and in ill health.

De Blasio named Josh Neustein the worst landlord. Neustein owns eight buildings in Upper Manhattan and the Bronx with a total of 1,187 violations. Internet searches reveal Neustein is notorious, especially in the Spanish-language press, for barely maintaining some of his Section 8 buildings, including 78 Post Avenue in Inwood, where tenants filed a lawsuit.

Crown Heights building tops Public Advocate Bill De Blasio's list of city's worst

EXCLUSIVE: Official releases list aimed at shaming owners into improving conditions for tenants

By Kevin Deutsch AND Reuven Blau

Published: Tuesday, December 27, 2011, 2:00 AM

Urine-soaked hallways. Leaky roofs. Holes in walls. No hot water or heat for weeks.

Those are some of the many conditions trying the patience of tenants living in bad-news buildings that made Public Advocate Bill de Blasio's third annual list of nightmare rentals and landlords.

The watch list includes 358 buildings owned by a total of 317 landlords.

"There have to be consequences for bad actors that walk away from their most basic responsibilities to tenants," de Blasio said, noting the purpose of the list is to shame landlords into improving conditions.



Virginia Baltimore in her violation-plagued apartment at 245 Sullivan Place in Crown Heights.

The building with the most violations is in Brooklyn — 245 Sullivan Place in Crown Heights.

Tenants at the 40-unit complex say they're sharing their homes with roaches and rats, and struggling to live with crumbling ceilings and exposed wiring. Some apartments lack either electricity, hot water or heat, or a mix of all three. City records show the building has 654 open violations.

"The building was basically abandoned," said tenant Lavelle Bert, 35, a telecommunications worker. "We have mold, our floor was flooded, and the electricity only works in certain places. It's frustrating to live like this."

He also had a gaping hole in his bathroom ceiling and had to have it fixed. "We called it our skylight," he joked, wishing it were funny.

James Crossman, 92, the building's owner, hasn't made any major repairs in two years, tenants say.

A woman who answered the door at his home in Queens Village said he's elderly and in ill health.

"All of those things (problems in the building) are being taken care of," she vowed.

Josh Neustein, owner of 1071 Home Corp., was rated the worst landlord in the city.

The self-made real estate big owns eight buildings on the watch list. The buildings, in upper Manhattan and the Bronx, have racked up 1,187 hazardous violations.

"We have decent tenants, we give good service and we take care of any repairs that have to be done," Neustein told the Daily News in April. He did not return a call seeking comment Monday.

De Blasio said the online list has helped coax landlords into making repairs.

The site — www.landlordwatchlist.com — has gotten 250,000 visitors since it was launched in 2010.

Many landlords who made the list have called to find out how to get off of it, de Blasio says. In all, 176 buildings have been taken off the roster after fixes were made.

Others have blamed their residents, housing advocates said.

That includes the owner of 41-45 Elliott Place in Mount Eden, the Bronx.

This month, management called the police during a recent tenant meeting in the apartment complex's lobby. Aided by community organizers, the tenants tried to talk with the landlord about their multiple grievances.

A manager told the cops they were trespassing and the meeting was broken up, tenants say.

On a tour of the building last week, The News found rusted floors and grime-filled hallways with flickering lights and peeling paint.

After The News spoke with several residents, management again called police.

"I have rarely seen this kind of harassment when tenants fear for their own safety," said Susanna Blankley, the lead organizer for Community Action for Safe Apartments.

The building's super, Henry Martinez, said residents caused the problems by cramming multiple families into small units.

Management Rider from the Article 8A Mortgage between HPD and Maristanc Corp., owner of 245 Sullivan Place, Brooklyn

MANAGEMENT RIDER

The Mortgagor shall provide for professional management of the Premises satisfactory to the Mortgagee pursuant to a contract approved by the Mortgagee. The Mortgagor hereby grants to the Mortgagee the unconditional right and authority to approve both the managing agent and the management contract for the Premises. Upon written notice to the Mortgagor of Mortgagee's disapproval of the then present managing agent and/or management contract for any reason whatsoever, the Mortgagor shall replace said managing agent and/or management contract within thirty (30) days with a managing agent and/or management contract satisfactory to Mortgagee. It shall be a default hereunder if the Mortgagor is unable to propose either a management agent or management contract satisfactory to Mortgagee within thirty (30) days after written request is made to the Mortgagor for a change in the managing agent or management contract.





J-51 Benefit History Summary

Tax Year 11/12 BROOKLYN Block 1305 Lot 68

Taxable Value before J-51 Ex	813,600	Total Tax	109,290.86
J-51 Exemption	0	Abatement	31,339.00
Taxable Value	813,600	Tax Due	77,951.86

Initial Year	Qtr	Yrs Ex	T/F	Abt Pct	Abt Yrs	Exemption Amount	Alteration Cost	Abatement Granted	Amount Remaining	MTZ /C
08/09		14	T	90	20	0	376,068	31,339.00	213,105.20	

CHANGE DATE

COMMENTS

08/09		14	T	90		11/19/11	AUTOMATIC ADJUSTMENT DUE TO TAX RATE CHANGE			
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Glossary of Terms used in Column Headings

- Abatement Granted:** J-51 Abatement Granted for the Year
- Abt Pct:** Percentage of Alteration Cost Abateable over Life of Abatement
- Abt Yrs:** Maximum Life of Abatement
- Alteration Cost:** Certified Cost of Abatement
- Amount Remaining:** Amount Still Abateable over Life of Abatement
- Exemption Amount:** Amount of J-51 Exemption
- Initial Year:** First Year of Benefit
- MTZ/C:** Limited by Minimum Tax Zone or Unit Cost
- Qtr:** First Quarter of First Year (Blank Indicates Full Year)
- T/F:** Status: Temporary or Final
- Yrs Ex:** Number of Years Exemption Runs



New York City Comptroller
John C. Liu

NEWS RELEASE

LIU: \$9.8 MILLION STOCKPILED IN HPD ACCOUNT OPERATED OUTSIDE CITY BUDGET PROCESS

*Audit Determines Department of Housing Preservation and Development
Held Back Money That Should Have Gone to Help Fund City Budget*

NEW YORK, NY – City Comptroller John C. Liu today announced that an audit of the Department of Housing Preservation and Development (HPD) found that the agency kept \$9.8 million in unused funds from expired contracts and other sources – money that should have been returned to the City treasury.

“This money could have and should have been used to improve shelters, especially in light of rising homelessness,” Comptroller Liu said. “If HPD can’t use it right then the money should be put back in the City treasury.”

Auditors found that the agency inappropriately used a portion of the funds to supplement its operating budget and get around the budget process. The money uncovered by the audit was part of the HPD’s Relocation Shelter account, which is earmarked for capital expenditures at emergency shelters. As of October 2010, the agency had accumulated over \$9.8 million in excess funds in the account. The bulk of that money came from contracts that had expired, with HPD holding on to money that could have been used for capital improvements.

The audit recommends that the agency return the \$9.8 million to the City treasury. Agencies are not generally permitted to keep unused funds from expired contracts. The audit disagreed with HPD’s assertion that it had received prior permission to retain the unused funds.

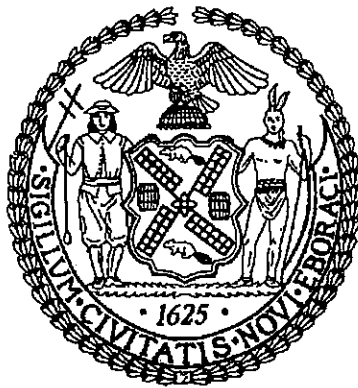
The scope of the audit was July 1, 2009, through October 31, 2010.

Comptroller Liu credited Deputy Comptroller for Audit Tina Kim and the Audit Bureau for presenting the findings. The full report is available at: <http://comptroller.nyc.gov/audits>

**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

**FINANCIAL AUDIT
Tina Kim
Deputy Comptroller for Audit**



**Audit Report on the
Department of Housing Preservation and Development's
Administration of Its 8A Section 17 Account**

FM12-083A

December 27, 2011

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

John C. Liu
COMPTROLLER

December 27, 2011

To the Residents of the City of New York:

My office has audited the Housing Preservation Development's (HPD) administration of its 8A Section 17 bank account to determine whether HPD administered the account in accordance with applicable rules and regulations. We audit entities such as HPD as a means of ensuring that they comply with established policies and procedures.

In 1985, Housing Preservation and Development (HPD) received permission from the New York City Department of Finance (DOF) to establish a bank account in order to make loans available to homeowners through the 8A Loan Program which was originally federally funded. The audit found that HPD does not properly administer its 8A Section 17 account. As of October 2010, HPD maintained nearly \$17 million in funds administered under various loan programs that were not used and should have been returned to the City unrestricted. Previously, these funds would revert directly back to the City. However, since 2007, these funds have been redirected to this account. The accumulation of funds allocated to this account may affect the budget and finances of the City because they are not available for other purposes.

Furthermore, an undetermined amount of these funds do not comply with the original purpose of the account because they belong to other programs outside of the 8A Loan Program and are not federal funds. Specifically, HPD does not have a breakdown of which funding sources and programs compose the balance. Inadequate and incomplete recordkeeping has resulted in the commingling of funds that belong to different funding sources and programs.

The audit recommends that HPD determine the exact composition of the account balance. In addition, HPD should transfer and unrestrict the \$16.9 million, less any funds claimed by another funding source, from the 8A Section 17 account to the general fund/capital fund and return the funds to their appropriate budget codes in the Financial Management System (FMS) and if needed, seek assistance from the Comptroller's Bureau of Accountancy for guidance on how to account for prior-year funds using FMS.

The results of the audit have been discussed with HPD officials, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or call my office at 212-669-3747.

Sincerely,

John C. Liu

Table of Contents

AUDIT REPORT IN BRIEF	1
Audit Findings and Conclusions	1
Audit Recommendations	2
Agency Response	2
INTRODUCTION	3
Background	3
Objective	3
Scope and Methodology Statement	3
Discussion of Audit Results	4
FINDINGS AND RECOMMENDATIONS	5
Nearly \$17 Million Improperly Held in 8A Section 17 Account.....	5
Inadequate Recordkeeping Results in Commingling of Funds	6
Recommendations	6
DETAILED SCOPE AND METHODOLOGY	8
ADDENDUM HPD Response	

The City of New York
Office of the Comptroller
Financial Audit

**Audit Report on the
Department of Housing Preservation and Development's
Administration of Its 8A Section 17 Account
FM12-083A**

AUDIT REPORT IN BRIEF

In 1985, Housing Preservation and Development (HPD) received permission from the New York City Department of Finance (DOF) to establish a bank account in order to make loans available to homeowners through the 8A Loan Program which was originally federally funded. Currently, the Article 8A Loan Program provides rehabilitation loans to correct substandard or unsanitary conditions and to prolong the useful life of multiple dwellings in New York City. As of October 2010, HPD maintained \$16.9 million in the 8A Section 17 account. Currently, HPD utilizes the 8A Section 17 account to hold unspent funds from previously issued loans. According to HPD, the balance in the account is composed of funds from several different loan programs, including but not limited to, the Neighborhood Entrepreneur Program and the Neighborhood Redevelopment Program.

Audit Findings and Conclusions

HPD did not properly administer its 8A Section 17 account. As of October 2010, HPD maintained nearly \$17 million in funds administered under various loan programs that were not used and should have been returned to the City unrestricted. Previously, these funds would revert directly back to the City and not the 8A Section 17 account. However, since 2007, these funds have been redirected to this account. The accumulation of funds allocated to this account may affect the budget and finances of the City because they are not available for other purposes. Furthermore, an undetermined amount of these funds do not comply with the original purpose of the account because they belong to other programs outside of the 8A loan program and are not federal funds. The exact amount allocated to these other programs could not be determined because HPD does not have a full accounting of the funding. Specifically, HPD does not have a breakdown of which funding sources and programs compose the balance. Inadequate and incomplete recordkeeping has resulted in the commingling of funds that belong to different funding sources and programs.

Audit Recommendations

HPD should:

- Determine the exact composition of the account balance.
- Transfer and unrestrict the \$16.9 million, less any funds claimed by another funding source, from the 8A Section 17 account to the general fund/capital fund and return the funds to their appropriate budget codes in the Financial Management System (FMS). If needed, seek assistance from the Comptroller's Bureau of Accountancy for guidance on how to account for prior-year funds using FMS.

Agency Response

HPD did not dispute the audit's findings and agreed with the two recommendations.

INTRODUCTION

Background

HPD is the largest municipal developer of affordable housing in the nation. Since 1987, HPD has provided over \$8.7 billion to support the repair, rehabilitation, and new construction of housing units. HPD also protects the existing housing stock and expands housing options for New Yorkers, improving the availability, affordability, and quality of housing in New York City.

In 1985, HPD received permission from DOF to establish a bank account in order to make loans available to homeowners through the 8A Loan Program, which was originally federally funded. Funds are placed in what is referred to as a Pool and Satellite or zero balance account. Essentially, the bank account operates with a zero dollar balance, while the funds remain in the City's treasury, restricted for the purpose HPD stated when it requested permission to open the bank account. When funds are needed, checks are processed and automatic dollar transfers are made to cover the disbursement from the Pool and Satellite account. Currently, the Article 8A Loan Program provides rehabilitation loans to correct substandard or unsanitary conditions and to prolong the useful life of multiple dwellings in New York City.

As of October 2010, HPD maintained \$16.9 million in the 8A Section 17 Account. Currently, HPD utilizes the 8A Section 17 account to hold unspent funds from previously issued loans. According to HPD, the balance in the account is composed of funds from several different loan programs, including but not limited to, the Neighborhood Entrepreneur Program and the Neighborhood Redevelopment Program.

Objective

Our audit objective was to determine whether HPD administered its 8A Section 17 account in accordance with applicable rules and regulations.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93 of the New York City Charter.

The scope of this audit was July 1, 2009, through October 31, 2010. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with HPD officials during and at the conclusion of this audit. A preliminary draft report was sent to HPD officials and discussed at an exit conference on November 21, 2011. On December 5, 2011, we submitted a draft report to HPD officials with a request for comments. We received a written response from HPD officials on December 19, 2011.

HPD did not dispute the audit's findings and agreed with the two recommendations. HPD officials stated that "HPD will continue to work to determine the exact composition of the account balance." HPD officials further stated that, "HPD is currently working with the Office of Management and Budget (OMB) to determine treatment of these funds.... Once HPD and OMB make a determination on the treatment of these funds, HPD will transfer the said funds to the general fund/capital fund and appropriate Financial Management System (FMS) budget/revenue codes."

Although HPD officials agreed with the audit's two recommendations, HPD needs to correct this situation immediately. It has already taken HPD five years to determine how to account for unused construction loan balances. Nonetheless, if HPD officials are serious in correcting this issue, they should contact the Comptroller's Bureau of Accountancy for assistance.

FINDINGS AND RECOMMENDATIONS

HPD did not properly administer its 8A Section 17 account. As of October 2010, HPD maintained nearly \$17 million in funds administered under various loan programs that were not used and should have been returned to the City unrestricted. Previously, these funds would revert directly back to the City and not the 8A Section 17 account. However, since 2007, these funds have been redirected to this account. The accumulation of funds allocated to this account may affect the budget and finances of the City because they are not available for other purposes. Furthermore, an undetermined amount of these funds do not comply with the original purpose of the account because they belong to other programs outside of the 8A loan program and are not federal funds. The exact amount allocated to these other programs could not be determined because HPD does not have a full accounting of the funding. Specifically, HPD does not have a breakdown of which funding sources and programs compose the balance. Inadequate and incomplete recordkeeping has resulted in the commingling of funds that belong to different funding sources and programs.

Nearly \$17 Million Improperly Held in 8A Section 17 Account

Since 2007, HPD has been redirecting unused loan funds and interest from several different loan programs to the 8A Section 17 account. Prior to 2007, unused funds would be returned directly to the City. However, according to HPD officials, the Mayor's Office of Management and Budget (OMB) instructed HPD to redirect funds to this account because the City lacked an adequate mechanism to account for unused loan funds. HPD officials also stated that this arrangement is temporary until HPD and OMB determine how to "treat deposits of this nature." However, this process does not appear temporary. The account's balance as of October 2010 was nearly \$17 million. The book balance in the account as of the start of Fiscal Year 2007 was only \$2.4 million and has steadily increased to the \$17 million balance as of October 2010.

HPD is establishing a large reserve of cash by accumulating unused loan funds. Excess funds that are not used affect the City's cash flow. Accumulating the amount of cash that is allocated to the account may directly affect the finances of the City because the use of the funds as allocated is restricted and cannot be re-appropriated for other purposes.

Furthermore, according to DOF records, the account was only authorized to make loans to homeowners through the federally funded 8A program. However, now the account is being used for other purposes. According to HPD officials, the account is being used as a holding account and contains mostly City capital funds derived from various other loan programs. At present, funds are allocated to the account under the label of the 8A program, which appears to constitute a fraction of the total balance. Due to HPD's insufficient recordkeeping, the exact breakdown of funding sources and programs that compose the balance is unknown. In addition to the excessively large balance maintained, there is now a lack of transparency because the account is being used for purposes other than those authorized by DOF. Consequently, HPD has built up a huge reserve which may not be subject to the City's budget process.

Inadequate Recordkeeping
Results in Commingling of Funds

Based on our review of HPD's ledgers and discussions with HPD officials, HPD's recordkeeping is incomplete and inadequate. HPD could not provide a breakdown of the composition of the 8A Section 17 account. Specifically, HPD pooled funds in the account without maintaining separate subledgers detailing balances allocated to different programs and funding sources. Therefore, HPD can only estimate the account's composition and cannot provide specific dollar figures. This has resulted in a commingling of funds. According to HPD, "We are working on an analysis of the programs with balances within the Section 17 account."

In addition, HPD stated that "The loan projects and/or program names for which unspent funds were deposited during the audit period were delineated and included on the activity ledger previously provided to you." There are also issues with this statement. According to the ledgers, between July 1, 2009, and October 31, 2010, HPD processed six deposits totaling \$553,571, and nine withdrawals totaling \$199,802, which lacked a description of the source or destination of the funds. Although HPD subsequently provided documentation supporting each entry, the lack of a description on the ledgers could result in the misuse of funds.

For example, HPD issued nine \$50 checks from the 8A Section 17 account totaling \$450. For these transactions, HPD's ledgers did not disclose the recipients of the funds. A review of the cancelled checks and supporting documentation revealed the payments were stipend checks made to Section 8 Resident Advisory Board members—completely unrelated to loans or the purpose of the account. Although HPD later reimbursed the account, allowing transactions to be recorded with blank descriptions on the ledgers increases the risk that error or fraud could occur.

Recommendations

HPD should:

1. Determine the exact composition of the account balance.

HPD Response: "The Pool and Satellite account operates with a zero balance while the funds remain in the City's Treasury. HPD prepares monthly bank reconciliation statements and also submits the June's reconciliation (annually) to the Comptroller's Division of Accounting Compliance. In addition to reconciling monthly to internal records, HPD reconciles to the Central Pool Worksheet Balance report of the Department of Finance, Bureau of Treasury.

"HPD has provided timely documentation to substantiate all deposits/disbursements questioned. HPD maintains records of bank reconciliations, checks, account ledger, and other supporting documentation to substantiate the transactions in this account. HPD will continue to work to determine the exact composition of the account balance."

Auditor Comment: As a responsible custodian of these funds, HPD should have had a complete accounting of these funds, including funding sources, from the start. Given the current economic state of the City, HPD should immediately determine the exact composition of these funds so that funds can be released from the account after HPD, OMB and the Comptroller's office Bureau of Accountancy decide on how to properly account for these funds.

2. Transfer and unrestrict the \$16.9 million, less any funds claimed by another funding source, from the 8A Section 17 account to the general fund/capital fund and return the funds to their appropriate budget codes in FMS. If needed, seek assistance from the Comptroller's Bureau of Accountancy for guidance on how to account for prior-year funds using FMS.

HPD Response: "This account is currently used to temporarily hold unspent funds returned to the agency from previously issued construction loans. HPD is currently working with the Office of Management and Budget (OMB) to determine treatment of these funds. While these discussions are ongoing, HPD has opted to use the account to bring funds into the City's control, rather than leaving them at banks.

"Once HPD and OMB make a determination on the treatment of these funds, HPD will transfer the said funds to the general fund/capital fund and appropriate Financial Management System (FMS) budget/revenue codes. Some funds are appropriate for immediate deposit, in which case HPD has taken them out of the account and allocated them appropriately. The balance on the Section 17 account is \$13.9 million as of December 2011, demonstrating our progress."

Auditor Comment: Although HPD claims that it is in the process of working with OMB to determine the treatment of these funds, it has yet to come up with a solution after five years. Consequently, a huge balance has accumulated at the expense of other City priorities. Further, HPD should have never used this account to hold these funds. Nonetheless, if HPD is serious about correcting this issue, they should contact the Comptroller's Bureau of Accountancy for assistance.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93 of the New York City Charter.

The scope period of this audit was July 1, 2009, through October 31, 2010. To achieve our objectives, we reviewed Comptroller's Directive #1, "Principles of Internal Control," Comptroller's Directive #11, "Cash Accountability and Controls," Comptroller's Directive #27, "Fiduciary Accounts: Procedures for Requesting, Controlling and Monitoring," and Comptroller's Office Memorandum 92-12: "Use of Personal Bank Accounts for City Business."

To gain an understanding of HPD's 8A Section 17 account, we reviewed HPD's operating bank account procedure, Description of Operating Bank Accounts, and the account's authorization letter from DOF. To gain an understanding of the controls in place, we conducted a walk-through of the Accounts Payable Department. We interviewed HPD directors and officials from the Fiscal and Budget Department. We documented the interviews through written narrative. We also created a spreadsheet that identifies employees and their responsibilities over the account. This spreadsheet was analyzed to determine whether HPD properly segregated duties that mutually pose potential risk of error or fraud.

To conduct our testing, we judgmentally sampled the month with the largest total disbursement (\$2,987,014-October 2010), out of total disbursements of \$4,744,945 for the audit period. To identify the month with the largest total disbursement, we used HPD's monthly bank reconciliations and compiled a spreadsheet indicating all disbursements. To determine whether the information from the bank reconciliations was accurate and reliable, we randomly selected one month (August 2009) and obtained the bank statement. We compared the disbursements and deposits presented on the randomly selected bank statement to HPD's bank reconciliation. Due to the nature of a Pool and Satellite account, the bank statements reported a zero balance. Therefore, we also utilized the DOF's Pool and Satellite Cash Management report to verify the balances reported on the reconciliation report. Based on our procedures, we believe we have obtained reasonable assurance that the data provided by HPD is complete and accurate.

To determine whether HPD's controls over the 8A Section 17 account were operating effectively, we initially reviewed HPD's list of authorized signatories and compared the signatures to those on the checks issued in October 2010. We also determined whether the proper preparer and supervisor signed and dated the bank reconciliation. To determine whether HPD processed disbursements in accordance with the original purpose of the account, we reviewed each transaction (12) supporting the \$2,987,014 disbursed during the sample period. We also

reviewed the supporting documentation to determine whether the disbursements were adequately supported.

To determine the composition of the \$16.9 million balance in the account, we interviewed HPD's directors and officials from the Fiscal and Budget Department. We obtained and reviewed the 8A Section 17 account ledger from June 2009 through October 2010.

The results of the above tests, while not statistically projected to their respective populations, provide a reasonable basis for us to assess HPD's administration of the 8A Section 17 account in accordance with applicable rules and regulations.



Department of
Housing Preservation
& Development
nyc.gov/hpd

MATHEW M. WAMBUA
Commissioner

Office of the Commissioner
100 Gold Street
New York, N.Y. 10038

December 19, 2011

Tina Kim
Deputy Comptroller for Audits
Office of the New York City Comptroller
1 Centre Street- Room 1100N
New York, New York 10007-2341

Re: **Audit on HPD's Administration of its 8A Section 17 Bank Account**
Audit Number: FM12-083A

Dear Deputy Comptroller Kim:

The following represents the Department of Housing Preservation and Development's response to the findings and recommendations made in your audit on the Housing Preservation and Development's Administration of its 8A Section 17 Bank Account. Thank you for your consideration during the fieldwork and at the Exit Conference.

If you have any additional questions, please call Assistant Commissioner Josh Cucchiaro at (212) 863-6610.

Thank you.

Sincerely,

Mathew M. Wambua

c: Elizabeth Weinstein, Director, Mayors Office of Operations
Douglas Apple
Joshua Cucchiaro



AUDIT RESPONSE
NEW YORK CITY COMPTROLLERS AUDIT
NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
ADMINISTRATION OF 8A SECTION 17 ACCOUNT
REPORT FM12-083A

Finding

Nearly \$17
Million
Improperly Held
in 8A Section 17
Account

Recommendation 1.

HPD should determine
the exact composition of
the account balance.

Response 1.

The Pool and Satellite account operates with a zero balance while the funds remain in the City's Treasury. HPD prepares monthly bank reconciliation statements and also submits the June's reconciliation (annually) to the Comptroller's Division of Accounting Compliance. In addition to reconciling monthly to internal records, HPD reconciles to the Central Pool Worksheet Balance report of the Department of Finance, Bureau of Treasury.

HPD has provided timely documentation to substantiate all deposits/disbursements questioned. HPD maintains records of bank reconciliations, checks, account ledger, and other supporting documentation to substantiate the transactions in this account. HPD will continue to work to determine the exact composition of the account balance.

Finding

Inadequate
Recordkeeping
Results in
Commingling of
Funds

Recommendation 2.

HPD should transfer and unrestrict the \$16.9 million, less any funds claimed by another funding source, from the 8A Section 17 account to the general fund/capital fund and return the funds to their appropriate budget codes in FMS. If needed, seek assistance from the Comptroller's Bureau of Accountancy for guidance on how to account for prior-year funds using FMS.

Response 2.

This account is currently used to temporarily hold unspent funds returned to the agency from previously issued construction loans. HPD is currently working with the Office of Management and Budget (OMB) to determine treatment of these funds. While these discussions are ongoing, HPD has opted to use the account to bring funds into the City's control, rather than leaving them at banks.

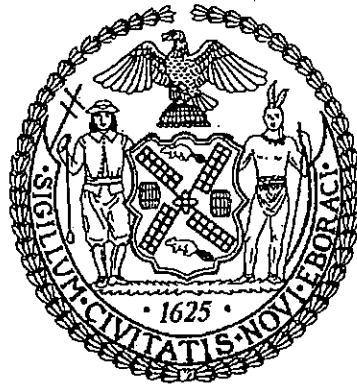
Once HPD and OMB make a determination on the treatment of these funds, HPD will transfer the said funds to the general fund/capital fund and appropriate Financial Management System (FMS) budget/revenue codes. Some funds are appropriate for immediate deposit, in which case HPD has taken them out of the account and allocated them appropriately. The balance on the Section 17 account is \$13.9 million as of December 2011, demonstrating our progress.



**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

FINANCIAL AUDIT
Tina Kim
Deputy Comptroller for Audit



**Audit Report on the
Department of Housing Preservation and
Development's Administration of Its Relocation
Shelter Account**

FM11-081A

November 21, 2011

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

John C. Liu
COMPTROLLER

November 21, 2011

To the Residents of the City of New York:

My office has audited the Housing Preservation Development's (HPD) administration of its Relocation Shelter account to determine whether HPD administered the account in accordance with applicable rules and regulations. We audit entities such as HPD as a means of ensuring that they comply with established policies and procedures.

In 1987, HPD received permission from the New York City Department of Finance (DOF) to establish the Relocation Shelter account in order to pay capital expenditures associated with certain government-funded shelters. The audit found that HPD does not properly administer its Relocation Shelter account in accordance with City regulations. As of October 2010, HPD maintained over \$9.8 million in Relocation Shelter funds that have accumulated and have essentially remained unused since 2007. Approximately \$8.9 million of these funds originated from five contracts that have expired. At least \$3.1 million of the \$8.9 million from one of the contracts should not have been directed to this account. Furthermore, HPD accumulated nearly \$5.7 million of the \$8.9 million through a clause in four of the five contracts that allowed HPD to indefinitely retain reserve funds. This clause is particularly questionable because agencies are usually not permitted to keep funds leftover from expired contracts. The remaining \$933,654 has not been used since 2005.


Regardless of whether HPD should have retained the \$9.8 million in funds, the funds are unused, the amounts are excessive, and they should be promptly appropriated in the City's Fiscal Year 2012 budget. In addition, HPD is using this account for purposes other than those for which it received permission. HPD received permission to use the account to pay capital expenditures, but now uses the account to pay vacate order reimbursements and other shelter expenses.

The audit recommends that HPD transfer and appropriate the \$9.8 million, less any funds claimed by another funding source, from the Relocation Shelter account to the general fund and adjust the Relocation Shelter account ledgers to reflect the disbursement. In addition, HPD should decide if the Relocation Shelter account should remain open and, if so, submit a revised City bank account request form to DOF that establishes the new business purpose for the account.

The results of the audit have been discussed with HPD officials, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or call my office at 212-669-3747.

Sincerely,



John C. Liu

Table of Contents

AUDIT REPORT IN BRIEF	1
Audit Findings and Conclusions.....	1
Audit Recommendations.....	2
Agency Response.....	2
INTRODUCTION	3
Background.....	3
Objective.....	3
Scope and Methodology Statement	3
Discussion of Audit Results.....	4
FINDINGS AND RECOMMENDATIONS	5
\$9.8 Million in Unused Funds Questionably Retained.....	5
Change in Business Purpose for Relocation Shelter Account	7
Recommendations	8
DETAILED SCOPE AND METHODOLOGY	10
ADDENDUM HPD Response	

*The City of New York
Office of the Comptroller
Financial Audit*

**Audit Report on the Department of
Housing Preservation and Development's
Administration of Its Relocation Shelter Account**

FM11-081A

AUDIT REPORT IN BRIEF

HPD operates its own shelter system to assist people who are vacated from their homes as a result of emergencies such as fires. Families are placed in one of three government-funded shelters (Ruth Fernandez Family Residence, Convent House Shelter, and H.E.L.P. USA), while single adults are placed in government-funded hotels.¹ HPD also contracts with American Red Cross (ARC) for temporary relocation services. In 1987, HPD received permission from the New York City Department of Finance (DOF) to establish the Relocation Shelter account in order to pay capital expenditures associated with the shelters.

As of October 2010, HPD maintained \$9.8 million in the Relocation Shelter account. According to HPD records, the balance of the account is composed of seven subledgers. Five of the subledgers include funds derived from agreements with the contractors hired to provide shelter and hotel services. In addition, HPD has a "Hotels" subledger, which has not been used since 2005, and a "Vacate" subledger designated to provide moving expense reimbursements to individuals ordered to vacate their homes. During the period of July 2009 through October 2010, the only subledger with more than one recorded disbursement was Vacate.

Audit Findings and Conclusions

HPD does not properly administer its Relocation Shelter account in accordance with City regulations. As of October 2010, HPD maintained over \$9.8 million in Relocation Shelter funds that have accumulated and have essentially remained unused since 2007. Approximately \$8.9 million of these funds originated from five contracts that have expired. At least \$3.1 million of the \$8.9 million from one of the contracts should not have been directed to this account. Furthermore, HPD accumulated nearly \$5.7 million of the \$8.9 million through a clause in four of the five contracts that allowed HPD to indefinitely retain reserve funds. This clause is particularly questionable because agencies are usually not permitted to keep funds leftover from expired contracts. The remaining \$933,654 has not been used since 2005. Regardless of whether

¹ HPD had an agreement with another shelter, Harriet Tubman Family Living, which expired in June 2009. This agreement was not renewed.

HPD should have retained the \$9.8 million in funds, the funds are unused, the amounts are excessive, and they should be promptly appropriated to the City's FY 2012 budget.

In addition, HPD is using this account for purposes other than those for which it received permission. HPD received permission to use the account to pay capital expenditures, but now uses the account to pay vacate order reimbursements and other shelter expenses.

Audit Recommendations

HPD should:

- Transfer and appropriate the \$9.8 million, less any funds claimed by another funding source, from the Relocation Shelter account to the general fund and adjust the Relocation Shelter account ledgers to reflect the disbursement, and
- Decide if the Relocation Shelter account should remain open and, if so, submit a revised City bank account request form to DOF that establishes the new business purpose for the account.

Agency Response

In its response, HPD disagreed with the audit's conclusion that the Relocation Account is essentially unused. HPD stated that it worked with the Office of Management and Budget to use the funds to support the original programmatic intent – emergency shelter for households vacated from their homes. HPD further stated that it agreed to work with DOF to modify the business purpose of the Relocation Shelter account.

We acknowledge the HPD officials' response but continue to affirm our recommendations. This account was established so HPD could pay for capital expenditures at the shelters and not as a private reserve to fund HPD's shelter operations at a later date. As of October 2010, the \$9.8 million sat largely unused since 2007 as well as after the contracts expired in 2009. HPD claims that the current use of these funds as Other Categorical grants was approved by the City Council. However, the extent of the Council's knowledge of the source, contents, and/or existence of the Shelter Relocation account is unclear. Accordingly, we reiterate that HPD should immediately return all funds to the City's general fund in one Fiscal Year, and seek program funding through conventional means.

INTRODUCTION

Background

The Department of Housing Preservation and Development (HPD) is the largest municipal developer of affordable housing in the nation. Since 1987, HPD has provided over \$8.7 billion to support the repair, rehabilitation, and new construction of housing units. HPD also protects the existing housing stock and expands housing options for New Yorkers, improving the availability, affordability, and quality of housing in New York City.

HPD operates its own shelter system to assist people who are vacated from their homes as a result of emergencies such as fires. Families are placed in one of three government-funded shelters (Ruth Fernandez Family Residence, Convent House Shelter, and H.E.L.P. USA), while single adults are placed in government-funded hotels. HPD also contracts with American Red Cross (ARC) for temporary relocation services. In 1987, HPD received permission from the New York City Department of Finance (DOF) to establish an account in order to "pay capital expenditures for which shelter has vouchered to cover deficits in Shelter Projects operation." Funds were placed in what is referred to as a Pool and Satellite or zero balance account. Essentially, the bank account operates with a zero dollar balance, while the funds remain in the City's treasury, restricted for the purpose HPD stated when it requested permission to open the bank account. When funds are needed, checks are processed and automatic dollar transfers are made to cover the expense. Separate ledgers are maintained detailing balances allocated for the account.

As of October 2010, HPD maintained \$9.8 million in the Relocation Shelter account. According to HPD records, the balance of the account is composed of seven subledgers. Five of the subledgers include funds derived from agreements with the contractors hired to provide shelter and hotel services (including Harriet Tubman Family Living). In addition, HPD has a "Hotels" subledger, which has not been used since 2005 and a "Vacate" subledger designated to provide moving expense reimbursements to individuals ordered to vacate their homes. During the period of July 2009 through October 2010, the only subledger with more than one recorded disbursement was Vacate.

Objective

To determine whether HPD administered its Relocation Shelter account in accordance with applicable rules and regulations.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was

conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93 of the New York City Charter.

The scope of this audit was July 1, 2009, through October 31, 2010. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with HPD officials during and at the conclusion of this audit. A preliminary draft report was sent to HPD officials and discussed at an exit conference on October 14, 2011. On October 20, 2011, we submitted a draft report to HPD officials with a request for comments. We received a written response from HPD officials on November 3, 2011.

HPD officials disagreed with the first finding and recommendation. HPD stated that "The conclusion that the Relocation Account is 'essentially unused' is incorrect." Furthermore, HPD officials stated, "the contract language that the auditors deem 'questionable' was approved by the Comptroller's office at the time."

HPD officials did not address the second finding, but did agree with the recommendation. Specifically, HPD stated, "HPD will work with Department of Finance (DOF) Treasury Division to modify the business purpose of this account to include language such as 'to be used for Relocation Expenses as HPD deems necessary with respect to the temporary housing for relocates.'"

We acknowledge the HPD officials' response but continue to affirm our recommendations. As previously explained, this account was established so HPD could pay for capital expenditures at the shelters and not as a private reserve to fund HPD's shelter operations at a later date. As of October 2010, the \$9.8 million sat largely unused since 2007 as well as after the contracts expired in 2009. HPD claims that the current use of these funds as Other Categorical grants was approved by the City Council. However, the extent of the Council's knowledge of the source, contents, and/or existence of the Shelter Relocation account is unclear. Further, as HPD is aware, the fact that a contract is registered by the Comptroller does not imply agreement with each and every contract term nor does it provide an agency with authority that may be contrary to law, regulation or policy. Accordingly, we reiterate that HPD should immediately return all funds to the City's general fund in one Fiscal Year, and seek program funding through conventional means. Regarding the second finding, if HPD's sole purpose of modifying the account is to comply with procedures while it uses the aforementioned funds, then the account should be closed immediately.

HPD's full response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

HPD does not properly administer its Relocation Shelter account in accordance with City regulations. As of October 2010, HPD maintained over \$9.8 million in Relocation Shelter funds that have accumulated and have remained essentially unused since 2007.² Approximately \$8.9 million of these funds originated from five contracts that have expired. At least \$3.1 million of the \$8.9 million from one of the contracts should not have been directed to this account. Furthermore, HPD accumulated nearly \$5.7 million of the \$8.9 million through a clause in four of the five contracts that allowed HPD to indefinitely retain reserve funds. This clause is particularly questionable because agencies are usually not permitted to keep funds leftover from expired contracts. The remaining \$933,654 has not been used since 2005. Regardless of whether HPD should have retained the \$9.8 million in funds, the funds are unused, the amounts are excessive, and they should be promptly appropriated to the City's FY 2012 budget.

In addition, HPD is using this account for purposes other than those for which it received permission. HPD received permission to use the account to pay capital expenditures, but now uses the account to pay vacate order reimbursements and other shelter expenses.

\$9.8 Million in Unused Funds Questionably Retained

HPD has accumulated more than \$9.8 million in Relocation Shelter funds that have been scarcely used since 2007. Excess funds that are not used affect the City's cash flow. HPD has allowed unexpended funds to accumulate without returning the funds to their original funding source. Consequently, HPD has built up a huge reserve of funds, which, as things stand, may not be subjected to the City's budget process—which includes the review, consideration, and approval of the City Council. Furthermore, the method HPD used to retain most of this cash is questionable. HPD obtained the majority of these funds through contracts with five non-profits, which were paid by HPD to provide shelter and disaster relief services. These contracts all expired in 2009. For one of the contracts, there was no explanation as to why HPD would transfer \$3.1 million from this contract into the Relocation Shelter account. The remaining four contracts included terms that allowed the establishment of a reserve. However, this appears questionable, particularly after the contracts expired. See Table I for a breakdown of the balance and the contracts.

² One transaction was made from the contract funds in 2009. This transaction is discussed later in the report.

Table I
Balance of Unused Funds
by Contract

Contracts	Contract Authorization Amount (including renewals)	Contract End Date (including Renewal periods)	Balance as of October 31, 2010
American Red Cross	\$15,600,000	11/30/2009	\$3,156,829
Ruth Fernandez	13,759,008	06/30/2009	2,229,939
Harriet Tubman	17,860,189	06/30/2009	1,653,900
Convent	16,002,296	06/30/2009	1,233,401
HELP USA	29,153,864	06/30/2009	639,371
TOTAL	\$92,375,357		\$8,913,440*

* According to HPD officials, the remaining balance of \$933,654 was allocated to the "Hotels" subledger—bringing the total to \$9,847,094. The \$933,654 was the carry-over balance in the sub-ledger.

The aforementioned \$3.1 million came from the City's contract with American Red Cross (ARC). ARC was contracted to provide disaster relief services and temporary housing in hotels. As with most other contractors, the City processed payments to ARC through its Financial Management System (FMS). However, HPD also processed several payments against this contract from FMS and transferred the funds into its Relocation Shelter account. One payment made in July 2005 was in excess of \$2.3 million. The total \$3.1 million in funds attributed to ARC has remained in the Relocation Shelter account since the contract terminated in 2009. Based on HPD's contract with ARC, we could not determine what would necessitate such a practice other than transferring funds from a budget line to establish a reserve for itself outside of the normal budget process.

The remaining \$5.7 (of the \$8.9) million balance in the account was derived from HPD's contracts with the four shelters. Each contract contained a reserve clause stating that HPD could retain a portion of the total contract. According to the contracts, these funds were to be used for capital expenses at the shelters and emergency expenses, whether or not they related to the shelter. Upon the expiration of the contracts between HPD and the shelters, the contracts state that HPD may apply any remaining reserve funds for the payment of debt service on the premises, retain the funds for capital expenses, or treat the funds as City funds. It is questionable whether an agency should arbitrarily establish a line of funding in this manner, be allowed to indefinitely retain funds after the expiration of a contract, and also be permitted to exercise this degree of latitude and discretion over funds. These contracts expired in 2009, and the new placement contracts do not contain a reserve clause.

According to HPD officials, HPD plans on assuming these funds as "Other Categorical" grants in the City budget and Financial Plan at a rate of \$1 million a year over eight years. We do not question the importance of the program, but we do question the method in which HPD accumulated and plans on spending the \$9.8 million. Excess or reserve funds from contracts that

have expired should not be collected and retained in accounts to be used by an agency at a later date. Once contracts expire, funds should be returned to their originating source and re-appropriated in order to reflect the policy decisions and priorities of all parties involved in the City budgetary process.

**Change in Business Purpose
for Relocation Shelter Account**

HPD has been using the Relocation Shelter account for purposes other than those for which it had indicated when it received DOF's approval for opening the account. According to the "New Bank Account Worksheet," HPD's intent for opening the account was "to pay capital expenditures for which the shelter has vouchered to cover deficits in the Shelter Project operations."³ However, HPD has been using the account to pay reimbursement allowances (moving expenses) of individuals who were subject to vacate orders. In addition, HPD used \$500,000 from the relocation account to fund the day-to-day operating expenses for the shelters. HPD's contracts with the shelters define capital expenditures as "expenses for the replacement of furniture, household equipment, heating plants, refrigerators, ranges and other capital equipment and/or major repair or renovation or for extraordinary operational or personnel expenses." Expenses paid with the \$500,000 include utilities, property taxes, insurance, bedding supplies, and phone services. None of these expenditures appears to be for a capital purpose.

According to DOF's Bank Account Policy and Procedures, some of the reasons to close a bank account include a change in business purpose or inactivity. Since 2007, the only disbursements made from this account are the vacate payments and the one-time transfer of \$500,000 to fund the shelter expenses, both of which clearly constitute a change in business purpose. Without those transactions, there was no activity in the account. There is now a lack of transparency because the account is being used for purposes other than those authorized by DOF. It may have been easier to use an existing account, but HPD should have modified the account's purpose or submitted to DOF a new City Bank Account Request Form for approval by Treasury and registration by the Comptroller's office.

³ The "New Bank Account Worksheet" renamed "City Bank Account Request Form" is a form required by DOF prior to opening a new bank account. The form requires that agencies provide the purpose of the account, contact names, bank information, signatories, etc.

Recommendations

HPD should:

1. Transfer and appropriate the \$9.8 million, less any funds claimed by another funding source, from the Relocation Shelter account to the general fund in FY 2012 and adjust the Relocation Shelter account ledgers to reflect the disbursement.

HPD Response: "The conclusion that the Relocation Account is 'essentially unused' is incorrect. Furthermore, the contract language that the auditors deem 'questionable' was approved by the Comptroller's office at the time.

"In strict accordance with the language in the shelter contracts, surplus funds were deposited in the Relocation Account. While those contracts were in place, HPD had to maintain the reserve account. As soon as the contracts expired, HPD worked with the Office of Management and Budget to use the funds to support the original programmatic intent – emergency shelter for households vacated from their homes. Since contract expiration, HPD has withdrawn \$1.5M from the account for this purpose, and will continue to do so over time.

"The auditors state that 'once contracts expire, funds should be returned to their originating source and re-appropriated in order to reflect the policy decisions and priorities of all parties involved in the City budgetary process.' This in fact is an accurate description of how the Relocation Account has been handled. The baselined 'other categorical' budget authority in HPD's budget is the Relocation Account funding – it has been fully programmed in HPD's budget. This was done in consultation with OMB, through a budget document that was approved by the City Council."

Auditor Comment: As previously explained, this account was established so HPD could pay for capital expenditures at the shelters and not as a private reserve to fund HPD's shelter operations at a later date. As of October 2010, the \$9.8 million sat largely unused since 2007 as well as after the contracts expired in 2009. HPD claims that the current use of these funds as Other Categorical grants has been annually approved by the City Council for one million dollars. However, the extent of the Council's knowledge of the source, contents, and/or existence of the Shelter Relocation account is unclear.

For instance, a full disclosure of the source of the funds would have revealed that HPD had no rightful claim or could not provide an adequate explanation to at least \$3.1 million of the \$9.8 million balance. Specifically, HPD used the Relocation Account to siphon money from its American Red Cross contract for no apparent reason other than to stockpile funds. We do not believe the Council would approve the subsequent use of funds derived through such actions.

Furthermore, as it pertains to the other four contracts with the shelters, HPD states that the contract language regarding the reserve clauses was approved by the Comptroller's

Office. As HPD is well aware, the fact that a contract is registered by the Comptroller does not imply agreement with each and every contract term nor does it provide an agency with authority that may be contrary to law, regulation or policy. Accordingly, we reiterate that HPD should immediately return all funds to the City's general fund in one Fiscal Year, and seek program funding through conventional means.

2. Decide if the Relocation Shelter account should remain open and, if so, submit a revised City bank account request form to DOF that establishes the new business purpose for the account.

HPD Response: "The Relocation Shelter Pool and Satellite account will remain open to support Relocation Expenses. HPD will work with Department of Finance (DOF) Treasury Division to modify the business purpose of this account to include language such as 'to be used for Relocation Expenses as HPD deems necessary with respect to the temporary housing for relocates'."

Auditor Comment: The recommendation applies to the future use of the account and does not sanction the use of the funds currently composing the balance. HPD is attempting to correct its error by modifying the purpose of the account so that no one will question the use or accumulation of these funds. If HPD's sole purpose of modifying the account is to comply with procedures while it uses the aforementioned funds, then the account should be closed immediately.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93 of the New York City Charter.

The scope period of this audit was July 1, 2009, through October 31, 2010. To achieve our objectives, we reviewed Comptroller's Directive #1, "Principles of Internal Control," Comptroller's Directive #11, "Cash Accountability and Controls," Comptroller's Directive #27, "Fiduciary Accounts: Procedures for Requesting, Controlling and Monitoring," and Comptroller's Office Memorandum 92-12: "Use of Personal Bank Accounts for City Business."

To gain an understanding of HPD's Relocation Shelter account, we reviewed HPD's operating bank account procedures, Description of Operating Bank Accounts, and Relocation Shelter New Bank Account Worksheet application. To gain an understanding of the controls that are in place, we conducted a walk-through of the Accounts Payable Department. We interviewed HPD directors and officials from the Fiscal and Budget Department. We documented the interviews through written narrative. We also created a spreadsheet that identifies each employee and his/her responsibility over the account. This spreadsheet was analyzed to determine whether HPD properly segregated duties that mutually pose potential risk of error or fraud.

To conduct our testing, we judgmentally sampled the month with the largest total disbursement (\$502,340-September 2009). To identify the month with the largest total disbursement, we used HPD's monthly bank reconciliations and compiled a spreadsheet indicating all disbursements. To determine whether the information about the bank reconciliations was accurate and reliable, we randomly selected one month (May 2010) and obtained the bank statement. We compared the disbursements and deposits presented on the randomly sampled bank statement to HPD's bank reconciliation. Due to the nature of a Pool and Satellite account, the bank statements reported a zero balance. Therefore, we also utilized the DOF's Pool and Satellite Cash Management report to verify the balances reported on the reconciliation report. Based on our data reliability testing, we believe we have obtained reasonable assurance that the data provided by HPD is complete and accurate.

To determine whether HPD's controls over the Relocation Shelter account were operating effectively, we initially reviewed HPD's list of authorized signatories and compared the signatures to those on the checks for the month of September 2009. We also determined whether the bank reconciliation was signed and dated by a preparer and supervisor. To determine whether disbursements were made in accordance with the original purpose of the account, we reviewed each transaction (seven) supporting the \$502,340 (89 percent of all disbursements

during the audit period) disbursed during the sample period. We also reviewed the supporting documentation to determine whether the disbursements were adequately supported.

To determine the compositions of the \$9.8 million balance in the account, we interviewed HPD's directors and officials from the Fiscal and Budget Department. We obtained and reviewed seven Relocation Shelter subledger accounts and their balances as of October 31, 2010. In addition, we reviewed five contract agreements associated with the five subledgers dating back to 2005.

The results of the above tests, while not statistically projected to their respective populations, provide a reasonable basis for us to assess HPD's administration of the Relocation Shelter account in accordance with applicable rules and regulations.



Department of
Housing Preservation
& Development
nyc.gov/hpd

MATHEW M. WAMBUA
Commissioner

Office of the Commissioner
100 Gold Street
New York, N.Y. 10038

November 3, 2011

Tina Kim
Deputy Comptroller for Audits
Office of the New York City Comptroller
1 Centre Street- Room 1100N
New York, New York 10007-2341

Re: Audit on HPD's Administration of its Relocation Bank Account
Audit Number: FM11-081A

Dear Ms. Kim:

The following represents the Department of Housing Preservation and Development's response to the findings and recommendations made in your audit on the Housing Preservation and Development's Administration of its Relocation Bank Account. Thank you for your consideration during the fieldwork and at the Exit Conference.

If you have any additional questions, please call Assistant Commissioner Josh Cucchiaro at (212) 863-6610.

Thank you.

Sincerely,

Mathew M. Wambua

cc: Elizabeth Weinstein, Director, Mayors Office of Operations
Douglas Apple
Joshua Cucchiaro



AUDIT RESPONSE
NEW YORK CITY COMPTROLLERS AUDIT
NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
ADMINISTRATION OF RELOCATION SHELTER ACCOUNT
REPORT FM11-081A

Finding

\$9.8 Million
in Unused
Funds
Questionably
Retained

Recommendation 1.

HPD should transfer and appropriate the \$9.8 million, less any funds claimed by another funding source, from the Relocation Shelter account to the general fund in FY 2012 and adjust the Relocation Shelter account ledgers to reflect the disbursement.

Response 1.

The conclusion that the Relocation Account is "essentially unused" is incorrect. Furthermore, the contract language that the auditors deem "questionable" was approved by the Comptroller's office at the time.

In strict accordance with the language in the shelter contracts, surplus funds were deposited in the Relocation Account. While those contracts were in place, HPD had to maintain the reserve account. As soon as the contracts expired, HPD worked with the Office of Management and Budget to use the funds to support the original programmatic intent – emergency shelter for households vacated from their homes. Since contract expiration, HPD has withdrawn \$1.5M from the account for this purpose, and will continue to do so over time.

The auditors state that "once contracts expire, funds should be returned to their originating source and re-appropriated in order to reflect the policy decisions and priorities of all parties involved in the City budgetary process." This in fact is an accurate description of how the Relocation Account has been handled. The baselined "other categorical" budget authority in HPD's budget is the Relocation Account funding – it has been fully programmed in HPD's budget. This was done in consultation with OMB, through a budget document that was approved by the City Council.



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AUDIT RESPONSE
NEW YORK CITY COMPTROLLERS AUDIT
NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
ADMINISTRATION OF RELOCATION SHELTER ACCOUNT
REPORT FM11-081A

Finding

Change in
Business
Purpose for
Relocation
Shelter
Account

Recommendation 2.

HPD should decide if the Relocation Shelter account should remain open and, if so, submit a revised City bank account request form to DOF that establishes the new business purpose for the account.

Response 2.

The Relocation Shelter Pool and Satellite account will remain open to support Relocation Expenses.

HPD will work with Department of Finance (DOF) Treasury Division to modify the business purpose of this account to include language such as "to be used for Relocation Expenses as HPD deems necessary with respect to the temporary housing for relocates".



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FISCAL POLICY INSTITUTE

The Underground Economy in the New York City Affordable Housing Construction Industry, Fiscal Policy Institute. April 17, 2007.

The Fiscal Policy Institute (FPI) found that approximately two-thirds of affordable housing construction workers in New York City are illegally employed, either as independent contractors or employed off the books. The burden of this underground economy is most directly carried by the workers themselves through low wages, hazardous working conditions and the lack of social insurance or fringe benefits.

FPI also analyzed fiscal costs to the public that grow out of this shadow workforce. The report calculated annual costs between \$85 million to \$126 million. These costs include workers' compensation premiums pushed on other employers, health care costs shifted to taxpayers or businesses that provide their employees with health insurance, and tax collection decreased by contractors evading legal requirements.

The report also found a steep decline in the real wages of residential construction workers. Low wages paid in the affordable housing construction industry have contributed to the 30 percent decline in inflation-adjusted wages for New York City construction workers since 1990. For the lowest paid quarter of workers, nominal wages have barely changed over the past fifteen years.

The Underground Economy
in the New York City
Affordable Housing
Construction Industry



A Fiscal Policy Institute Report
www.fiscalpolicy.org

April 17, 2007

Preface

FPI's recent report, *One New York: An Agenda for Shared Prosperity*, outlines policies to help the state's diverse regions and populations grow together and to strengthen and expand the middle class. Enforcing labor standards and leveling the playing field among businesses are key elements of FPI's One New York agenda and should be major public policy priorities in New York City's booming housing construction industry.

This report lends detail to the vision in One New York and builds on FPI's previous research reports on New York's labor market, economic trends, social insurance programs, and the minimum wage. FPI has done a number of studies dealing with New York's construction industry. In 2004, in conjunction with the Building Trades Employers' Association and the Consortium for Worker Education, FPI published *Building Jobs: A Blueprint for the "New" New York*, a study of the "white collar" segment of the construction employment market. In April 2006, the New York City Employment and Training Coalition and the New York City Workforce Investment Board published a profile of the New York City construction labor market prepared by FPI. A brief literature survey, "The Economic Development Benefits of Prevailing Wage," was released in May 2006. These and other FPI reports can be found at: www.fiscalpolicy.org.

This report is a companion to one released in January of this year, *New York State Workers' Compensation: How Big Is the Coverage Shortfall?* That report demonstrated the need for New York State to undertake a concerted enforcement commitment and strategy to ensure compliance with the state workers' comp laws. The January report also examined the issue of the misclassification of workers as independent contractors by employers seeking to shirk their responsibility for payment of payroll taxes, social insurance premiums and employee fringe benefits.

Comments and questions on this report should be directed to FPI's Deputy Director and Chief Economist, James Parrott, Ph.D., who can be reached at 212-721-5624 or parrott@fiscalpolicy.org.

Table of Contents

Executive Summary	1
Recommendations:.....	2
Introduction.....	3
1. The Bottom Tier of the New York City Construction Labor Market	4
2. The Boom in New York City’s Residential Construction since 2000	6
3. The Bloomberg Administration and Affordable Housing	8
4. Where Are the Workers Who Are Building All This Housing?.....	9
5. The Underground Labor Market Begins with Employee Misclassification	12
6. Labor Standards Enforcement Should Be a Check on the Underground Economy	15
7. Estimating the Fiscal Impacts of the Underground Economy in New York City’s Affordable Housing Construction Industry	18
Conclusion	28

Executive Summary

This study uncovers a significant underground economy in affordable housing construction. Illegal employment practices are rampant. The size of the underground economy is estimated using the Current Population Survey and by comparing Labor Department payroll data to figures on new construction permits and awards.

Despite the dangerous working conditions in the affordable housing construction industry, most workers earn very low pay and few benefits. Few workers have health insurance. For most workers, employers are not paying premiums for workers compensation or unemployment insurance. For a significant number of workers, no payments are made into the social security or Medicare systems.

These practices have a broad fiscal impact on the city, state and national economies. When employers do not meet their legal responsibility for social insurance premiums, costs are shifted—onto employers that do. Similarly, when employers don't provide health insurance for employees, health care providers give uncompensated care, and costs are passed on to other consumers. Taxpayers in general suffer too, because the government picks up the tab for Medicaid and basic payments for social security and Medicare.

One third of New York City's residential construction is underground:

- New York City has been experiencing a tremendous boom in residential construction since 2000. New residential construction permits and construction awards have more than doubled. Yet there has been only a very slight increase in the Labor Department's official count of New York City residential construction workers.
- Conservatively, it is estimated that the current level of construction activity employs 82,000 New York City residential construction workers, and that construction contractors employ more than one third (30,000) of this number on an illegal basis.
- As many as 17,000 workers may be paid off the books and so do not show up in the official employment numbers. Also, 13,000 of those identified as self-employed in Census Bureau data may be employees who are misclassified as independent contractors by their employers.

In affordable housing construction, two-thirds is underground:

- It is estimated that the New York City affordable housing construction workforce numbers 13,350 workers. Of this number, about two thirds, or 9,000 workers, are illegally employed, either as independent contractors or employed off the books.

Most affordable housing construction workers receive very low pay, and few receive benefits:

- Many workers are paid \$10 an hour, an amount that has changed little over the past decade. The low wages paid in affordable housing construction contribute to the 30 percent decline in inflation-adjusted wages for New York City construction workers since 1990.

- Not only do construction contractors pay low wages, they also:
 - Illegally skirt responsibility for the payment of payroll taxes and social insurance premiums for their workers.
 - Deprive their workers of basic employment rights and opportunities for skill development and career advancement.
 - Shift the costs of employee health care onto the workers themselves, taxpayers and other employers that pay taxes and operate within legal requirements regarding payroll taxes and social insurance protections.

Employment practices in the affordable housing construction industry have sizable fiscal costs:

- Together, the shifted costs are estimated to range from \$85 million to \$126 million. The low end of the range represents strictly the costs of employer non-compliance with legal requirements given the wage rates currently paid.
- Current wages are unusually low for most affordable housing construction workers. Thus, the high end of the range of fiscal effects is based on the assumption of a \$14 an hour minimal wage standard. This wage standard equals the hourly equivalent (based on 1,840 annual hours) of 150 percent of the three-person 2007 federal poverty guideline.

The City heavily subsidizes the affordable housing industry and plans to sharply increase the number of subsidized housing starts:

- Under Mayor Michael Bloomberg, the City of New York justifiably has undertaken an ambitious ten-year plan to preserve or create 165,000 units of affordable housing. The ten-year goal includes preserving 73,000 units and building 92,000 new affordable housing units. Through the plan's first four years, the City subsidized about 6,000 new affordable starts per year. This number will have to almost double to 11,373 per year through the remaining six years of the plan to meet the 92,000-unit new construction goal. As the City sharply increases the number of City-subsidized housing starts over the next few years, the affordable housing share of new residential construction likely will increase.

Recommendations:

- New York City government should work with the State of New York to improve working conditions and the poor pay and benefit practices that exist in the affordable housing construction sector. The City has moved aggressively to address hazardous scaffold safety problems in construction. The logical next step is to recognize and begin addressing, together with the State, pervasive noncompliant labor practices. With the passage of several anti-fraud enforcement provisions in the historic workers' compensation reform legislation signed into law in mid-March, the State is also poised to dramatically improve labor standards enforcement.
- Enforcement efforts should be pursued in a fashion that benefits an often vulnerable workforce that includes many minority workers long shut out of opportunities for good-paying jobs, skill development and advancement, and workers who are recent immigrants.

Introduction

Affordability is one of the major challenges facing the New York City economy. The concept of “affordable” relates the cost of something to the income of the consumer of that good or service. Almost everyone acknowledges that New York City has a serious lack of affordable housing. Less well appreciated is the fact that the inflation-adjusted wage earnings of most workers generally have fallen compared to a decade and a half ago. This has contributed to the rise in the ranks of the working poor and to the tremendous increase in the gap between the rich and the poor and between the rich and those in the middle.¹

The eight percent decline in the real median hourly wage in New York City, across all industries, from 1990 to 2006, results from several factors. The decline in middle-income paying employment opportunities and the disproportionate growth in jobs paying low wages have been major contributors to this trend. This trend is also evident within industries as certain employment practices have put downward pressure on wages. Within New York City’s construction industry, where the real median hourly wage has fallen by 28 percent from 1990 to 2006,² the practice of misclassifying workers as independent contractors and the growing prevalence of off-the-books activity (the so-called underground economy) have been among the chief causes of wage erosion. These problems appear particularly acute within the affordable housing segment of residential construction.

In industries such as residential construction where wages have eroded substantially, the broader terms and conditions of employment have been transformed in a way that undermines many of the worker protections, benefits and opportunities that evolved over the course of several decades. Many residential construction workers are not covered by basic social insurance protections (unemployment insurance, workers’ compensation, temporary disability insurance), they do not have employer-provided health insurance or pension coverage, and, often, they do not have any paid leave time (vacation, holidays or sick pay). And without access to the apprenticeship system that exists in the unionized part of the construction industry in New York, they have limited opportunities to acquire new skills or to move up a career ladder. Such workers are consigned to a secondary tier of the labor market.

This report examines the growth in New York City’s residential construction sector, and the fiscal and economic costs associated with the apparent substandard employment practices characteristic of the affordable housing segment of that market. The report

¹ For a discussion of the rise in the ranks of the working poor in New York City, see the Report of the Mayor’s Commission on Economic Opportunity, http://www.nyc.gov/html/om/pdf/ceo_report2006.pdf. For a discussion of the widening income gap in New York State and New York City, see Fiscal Policy Institute, *Pulling Apart in New York: An Analysis of Income Trends*, <http://www.fiscalpolicy.org/PullingApartNY2006.pdf>, January 2006.

² The hourly wage changes reported in this paragraph are based on data from the Current Population Survey Outgoing Rotation Group (CPS-ORG) file, deflated using the Consumer Price Index for the New York metropolitan area.

identifies several factors that all point in the same direction, namely, that the housing construction boom in New York City has been accompanied by an increase in illegal employment practices.

1. The Bottom Tier of the New York City Construction Labor Market

Construction work is often dangerous. In the last full federal fiscal year, through September 30 2006, there were 28 deaths on New York City construction sites. Over two thirds of the construction workers killed on the job worked for employers with fewer than 10 employees.³ Overall, the city's construction industry offers some of the highest wages available for workers with limited formal education.⁴ However, wages, working conditions and employment practices are much different between the residential and non-residential segments of the industry. In 2005, the latest full year for which total wage data are available from payroll records, the average wage across all occupations within the residential construction industry was only 60 percent of the average wage in non-residential construction.⁵

Wages are higher in non-residential construction because the construction companies tend to be much larger and the workforce much more highly unionized. Annual pay for unionized journeypersons—workers who have completed an extensive apprenticeship program—can range as high as \$60,000 to \$85,000, along with family health insurance and pension benefits. The apprenticeship system, which combines actual work experience with extensive classroom instruction in craft skills and safety training, is well established in the city's non-residential construction sector and provides clear career ladders with significant pay progression.⁶

Much, but not all, of non-residential construction of commercial buildings and public infrastructure is by unionized employers in New York City. Much of the low- and mid-rise residential construction in the city, however, is not union and union conditions are not followed, contractors do not utilize or support the apprenticeship system and worker safety problems are much worse than on union worksites. Except for a portion of the affordable 20 percent component of high-end, high-rise residential construction under the

³ Richard Mendelson, Area Director, OSHA Manhattan, "2006 New York City Construction Safety Report Card," Presentation at BTEA Safety Conference, November 21, 2006.

⁴ Fiscal Policy Institute, "The New York City Construction Labor Market: A Labor Market Profile Prepared for the NYC Employment and Training Coalition and the NYC Workforce Investment Board," April 2006, http://www.fiscalpolicy.org/publications2006/Construction_LMP_April2006.pdf.

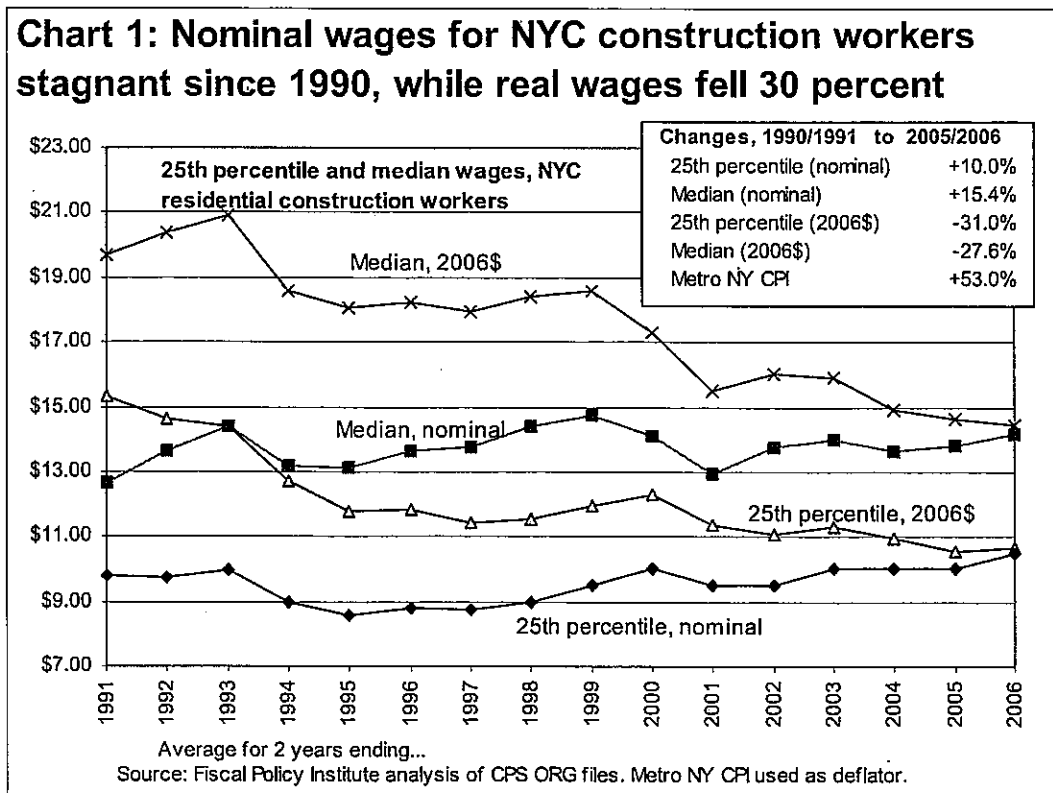
⁵ Data on average annual wages are from the New York State Department of Labor's Quarterly Census of Employment and Wages (QCEW) series and are different than the hourly wage data cited elsewhere in the Introduction, which are from the Current Population Survey (CPS). One difference is that the QCEW data are for construction workers employed in New York City while the CPS data are for NYC resident construction workers. Another major difference that is particularly significant in the construction industry is that the CPS data include some workers who are misclassified as independent contractors or who may be paid on a cash basis. These two categories of workers would not appear on the payrolls of construction companies and would not be counted in the QCEW series.

⁶ Fiscal Policy Institute, "The New York City Construction Labor Market." (See note 4.)

80-20 program, almost all affordable housing construction in New York City is non-union.

Of the roughly 112,000 resident non-union New York City construction trades workers in 2006, 26.4 percent (nearly 30,000) were paid \$10 an hour or less. While the Current Population Survey data on hourly construction wages does not permit disaggregation by residential or non-residential construction, it seems fairly certain from all information sources that workers in non-union residential construction receive wages at the low end of the construction wage spectrum.

The 25th percentile wage for all resident construction workers (union and non-union) increased to \$11.00 in 2006. But this increase is a recent development. In nominal terms (that is, before adjusting for inflation) \$10.00 an hour was the 25th percentile wage for most years between 1990 and 2005. (See Chart 1.) That is, there was virtually no change in the nominal wages paid at the low end of the construction industry for the prior 15 years. This astounding trend is probably unique among all industries in New York City over the past 15 years. While the wages that many New York City workers receive have failed to keep pace with the increase in consumer prices, it is highly unusual to see no increase whatsoever in the nominal wage for a sizable group of workers over such a span of time. This is particularly puzzling given the tremendous boom in residential construction since 2000.



The picture is even more pronounced once one adjusts for inflation. The purchasing power of the 25th percentile wage in construction declined by 31 percent from 1990 to 2006. As noted earlier, the real median hourly wage in New York City construction fell by 28 percent over this period.

The wage erosion of the last decade and a half has been accompanied by a broader marginalization process that leaves many construction workers without social insurance protections, health or pension benefits, paid leave time or access to skill development opportunities or even rudimentary safety training so critical for survival in a dangerous occupation.

Given the seasonal nature of construction work and the vagaries of weather conditions affecting largely outdoor work, the typical construction worker works about 1,840 hours per year, the equivalent of 46 weeks at 40 hours per week.⁷ At \$10 an hour, a construction worker stands to make about \$18,400 a year. This is only a little above the three-person federal poverty level guideline for 2007 of \$17,170.⁸

While a “self-sufficiency” household income in New York City is two to three times the poverty level, a minimal standard for a wage earner should be at least 150 percent of the federal poverty level.⁹ For a three-person household, 150 percent of the 2007 poverty guideline equals \$25,755. A construction worker working the industry average of 1,840 hours per year would need an hourly wage of \$14.00 to reach this level. This is not an unrealistic minimum standard for construction in New York City. According to data from the Current Population Survey, \$14.00 an hour is the median hourly wage for non-union construction workers in New York City. Health insurance coverage, paid time off, and regular training in construction safety should also be considered part of a minimal construction standard. Legal requirements already exist for employers to pay payroll taxes covering Social Security and Medicare and to pay social insurance premiums for unemployment insurance, workers’ compensation, and state temporary disability insurance.

2. The Boom in New York City’s Residential Construction since 2000

New York City has been experiencing a tremendous housing boom since 2000. Initially fueled by the rapid income growth of the late 1990s, then by low and falling interest rates, the growth in New York City housing permits continues at a high level even though

⁷ According to the CPS, the average hours worked annually for resident New York City construction workers over the 2003-to-2005 period was 1,840 hours.

⁸ The federal poverty measure is widely seen as limited since it is not adjusted for regional cost of living differences. Various researchers have sought to develop a more appropriate methodology to reflect a basic family standard of need. For example, the “self-sufficiency standard” is designed to reflect the income level necessary to meet basic family needs without public or private subsidy. The standard, which varies depending on family size and structure, generally ranges from two to three times the federal poverty threshold. See http://www.wceca.org/publications/NYC_Standard.pdf.

⁹ This is net of child care and health care expenses. See Working Group on New York City’s Low-Wage Labor Market, *Building a Ladder to Jobs and Higher Wages*, October 2000, pp. 135-136.

interest rates have risen from the low levels reached in late 2004. In 2004 and 2005, Mayor Bloomberg dramatically stepped up City financial support for affordable housing construction and set ambitious goals for the next few years.

The New York Building Congress projects that residential construction activity in New York City will continue in the \$5 billion annual range, representing roughly 30,000 housing units per year, from 2006 through 2008.¹⁰ This suggests that the New York City residential construction employment levels suggested above likely will continue through, at least, 2007 and 2008.

According to the Federal Occupational Safety and Health Administration (OSHA), there were 28 deaths on NYC construction sites in the federal fiscal year from Oct. 1, 2005 to Sept. 30, 2006. This was a 40 percent increase over the average level of 20 construction deaths a year from 2002 through 2005. Most of the deaths (17 of 28) resulted from falls. Over two-thirds (68 percent) of the construction workers killed on the job worked for very small employers (fewer than 10 employees). Most of the construction deaths (86 percent) occurred on the job sites of non-union employers.¹¹ The day following the death of a construction worker who fell off a scaffold in early November, Mayor Bloomberg established a task force on construction scaffold safety.

While the City has stepped up building safety enforcement in the wake of the scaffold task force, the *New York Post* reported on December 27, 2006, that a worker died when an apartment building undergoing renovation collapsed in Harlem. According to the article, the City Buildings Department stopped work on the site and planned to charge the contractor with four violations. The apartment building, which had been abandoned and was taken over by the City, had been sold by the City in 2003 to a developer, and was in a City housing rehabilitation program under the Department of Housing Preservation and Development.¹²

In examining the safety of working conditions in the New York City construction industry, the Mayor's Scaffold Worker Safety Task Force found extensive noncompliance with safety and health and Buildings Department regulations. Few workers are aware of existing safety and training requirements. The Task Force report stated: "Some workers may be reticent to demand safe job conditions for fear of retaliation by an employer." The Task Force report also noted that many workers have limited English proficiency and undocumented workers may be fearful of deportation. To improve construction safety, the critical Task Force recommendation was the establishment of a Scaffold Enforcement Unit within the Department of Buildings to conduct proactive inspections. The Task Force also

¹⁰ New York Building Congress, *Construction Outlook 2006-2008*, <http://www.buildingcongress.com/code/outlook/2006-2008-outlook.htm>.

¹¹ Richard Mendelson, Area Director, OSHA Manhattan, "2006 New York City Construction Safety Report Card," Presentation at BTEA Safety Conference, November 21, 2006.

¹² John Mazar, C.J. Sullivan and Ed Robinson, "Collapse Horror," *New York Post*, December 27, 2006. According to this story, the construction worker who died had been worried about the lack of safety protections on that job and had told family members two days before his death that he feared he was going to die on the job.

recommended that all scaffold workers, riggers and foreman comply with the safety training requirement, and that fines and penalties be increased.¹³

For an article in the May 2003 issue of *City Limits* magazine, Annia Ciezadlo interviewed several workers, contractors and others involved in NYC's affordable housing construction industry. Referring to a construction worker paid \$10 an hour, often in cash, Ciezadlo wrote:

Ramos is part of an underground workforce that builds New York City's affordable housing. ... Their cheap, sometimes off-the-books labor is what puts the "affordable" in affordable housing. Most of them are working for subcontractors, or even sub-subcontractors, at the bottom of a contracting chain. At or near the top of this chain are nonprofit community development groups, organizations that exist to make life better for poor people. But for the poor people at the bottom of this chain, their pay and treatment are the dirty little secret of the housing world.¹⁴

Ciezadlo's article described dangerous working conditions and noted that most workers on affordable housing construction sites do not receive safety training, do not have health insurance, and often are not covered by workers' compensation. When a worker gets injured on the job, employers never call an ambulance because to do so would mean there would be a record of the accident at the work site that could lead to "OSHA inspections, lawsuits, higher workers' compensation rates and higher insurance costs." Ciezadlo wrote that in order to circumvent workers' compensation, employers pay workers in cash or pay them as so-called independent contractors.¹⁵

3. The Bloomberg Administration and Affordable Housing

As residential construction activity flourished and housing prices soared early in this decade, Mayor Bloomberg has dramatically stepped up the City's commitment to build and preserve affordable housing. When first announced at the end of 2002, the Mayor's New Housing Marketplace Plan set a five-year goal of creating or preserving 65,000 units of affordable housing by 2008. In April of 2005 that was increased to 68,000 and in the fall of 2005, the New Housing Marketplace Plan was extended from five years to 10 years and the goal raised to 165,000 units of affordable housing. According to the Mayor,

¹³ Mayor Bloomberg's Scaffold Task Force Report, *Steps to Safety: Recommendations for Improving the Safety of Workers on Suspended Scaffolds*, December 2006. The Task Force Report was released on February 2, 2007.

¹⁴ Annia Ciezadlo, "Invisible Men," *City Limits*, May 2003.

¹⁵ Ibid. On November 2, 2006, Channel 4 television news aired the first segment from a six-month investigation into New York City's affordable housing program. This segment focused on shoddy construction quality problems that have plagued several affordable housing projects. See <http://www.wnbc.com/print/10224364/detail.html>.

the \$7.5 billion plan is the largest municipal affordable housing effort in the nation's history and will provide housing to 500,000 City residents by 2013.¹⁶

City funding support for affordable housing is primarily provided through the Department of Housing Preservation and Development (HPD) and the New York City Housing Development Corporation. The goal of 165,000 affordable housing units included preserving 73,000 units and building 92,000 units. Through the first four years (FY 2004-2007) of the ten-year plan, HPD reports that the City funded 23,765 new affordable housing starts. This amounts to about 6,000 new affordable starts per year. This number will need to almost double to 11,373 through the remaining six years of the plan to meet the 92,000-unit goal for new affordable units. In 2005 and 2006, the number of affordable housing units the City funded amounted to about 20 percent of the total number of New York City new residential permits. As the City sharply increases the number of City-funded housing starts over the next few years, the affordable housing share of new residential construction likely will increase.

4. Where Are the Workers Who Are Building All This Housing?

A careful look at the numbers supports the existence of what Ciezadlo called the "dirty little secret" of an "underground workforce." Measures of construction activity—permits, the value of permits and construction awards—have all more than doubled, while payroll employment has risen an anemic 16 percent. This implies that a considerable volume of NYC residential construction activity in recent years involves the misclassification of workers or some portion of off-the-books activity.

According to official U.S. Census Bureau data for new residential construction permits, the number of residential permits issued in NYC increased by 110 percent from 2000 to 2005, and the value of permits rose by an even greater 143 percent, increasing from \$1.1 billion to \$2.6 billion. F.W. Dodge data on residential construction contract awards show an increase of 130 percent over the 2000 to 2005 period, rising from \$2.2 billion to \$5.1 billion. (See Table 1.)

On the other hand, state labor department data on employment in NYC residential construction companies grew by 16 percent, rising from 32,750 to 38,113 over the same period. The residential permit data and the F.W. Dodge data are both widely used and highly regarded data sources for assessing residential construction trends. These data show increases from 110 percent to 143 percent. If residential construction employment had increased by 100 percent, there would have been an additional 38,000 residential construction jobs in NYC in 2005 than in 2000, a much greater increase than the 5,400 increase registered by the state labor department. It strains credulity to believe that the labor department employment numbers accurately reflect NYC residential construction activity. (See Table 1.)

¹⁶ New York City Mayor's Office and Department of Housing Preservation and Development, *The New Housing Marketplace: Creating Housing for the Next Generation, 2004-2013*, <http://www.nyc.gov/html/hpd/downloads/pdf/10yearHMplan.pdf>.

A large part of the under-reported number of residential construction workers is probably made up of workers misclassified as independent contractors. Such workers appear in the Current Population Survey (CPS) as self-employed. The number of construction workers identified as self-employed in the CPS increased from 18,000 in 2000 to 33,000 in 2005. These data strongly suggest a sharp increase in the number of construction workers misclassified as independent contractors during a period when residential construction activity was booming and non-residential construction activity declined. The CPS self-employed data cover both the residential and non-residential sides of the construction industry. Since the majority of self-employed workers likely work in the residential sector, it is estimated that residential self-employment increased from 10,800 in 2000 to 26,500 in 2005.¹⁷ If one assumes that half of the number of reported self-employed residential construction workers in 2005 are truly self-employed, that would mean that the other half, 13,251, are misclassified as independent contractors by employers.¹⁸

Adding together the residential construction payroll employment data and this estimated CPS self-employed data would show an increase of 48 percent from a combined total of 43,528 in 2000 to 64,616 in 2005. However, calculations show that the 2005 figure may well be an understatement. Starting from the 110 percent growth in the number of residential building permits from 2000 to 2005, and assuming moderately high annual productivity growth generates a projected 88 percent growth rate for residential construction employment over the five-year span. Applying the 88 percent growth rate projection to the 2000 level of residential construction employment (payroll plus self-employment) of 43,528 would mean a projected 2005 employment level of 81,668 for residential employment. The resulting net growth of 38,140 is 17,052 greater than the 21,088 increase resulting from official government payroll employment and CPS self-employment data.

This analysis suggests that there has been a substantial growth in off-the-books employment in New York City's residential construction sector. Given the increase in residential construction activity as measured credibly by the Census Bureau data on the number of permits and corroborated by the F.W. Dodge construction data, there should have been something like at least a projected 88 percent increase in residential construction employment, an increase much greater than the 48 percent increase based on the growth in residential construction employment from official government data sources. The employment increase should have been a projected 38,140 instead of the reported

¹⁷ A majority of self-employed workers are assumed to work on the residential sector because the employers in the commercial construction sector are primarily large firms with expertise on staff. Also, the proportion of self-employed workers in the residential sector is likely to have increased over time. FPI assumed that 40 percent was non-residential self-employment in 2000 and that this number (7,186) declined by 10 percent from 2000 to 2005 along with the broader decline in non-residential construction activity in New York City during this period.

¹⁸ The next section of this report discusses a Cornell University study that estimates that 14.8 percent of the construction workforce in New York State is misclassified as independent contractors. Applying this 14.8 percent rate to New York City's 2005 total construction payroll employment of 110,000 would yield an estimated 19,100 misclassified workers (the misclassification rate is applied to the sum of the payroll employment plus the number of misclassified workers).

increase of 21,088. Thus, reasonably it might be presumed that the magnitude of the off-the-books construction worker employment in 2005 was at least 17,100, the difference between the projected employment growth and the reported employment gain. This estimate of off-the-books employment is conservative, in part because it is based only on the projected growth from 2000 to 2005, without allowing for some portion of 2000 employment to be off the books.

Table 1: Residential construction activity and employment in New York City, 2000 - 2005

	<u>2000</u>	<u>2005</u>	<u>change</u>	<u>% change</u>
Construction activity measures				
Number of residential units given building permits (1)	15,050	31,599	16,549	110%
Value of residential building permits given (\$millions, nominal) (1)	\$1,064	\$2,588	\$1,524	143%
Residential construction contracts (\$millions, nominal) (2)	\$2,221	\$5,119	\$2,898	130%
Employment measures				
Residential construction payroll employment (3)	32,750	38,113	5,363	16%
Residential construction self-employment (4)	10,778	26,503	15,725	146%
Residential payroll employment + self-employment	43,528	64,616	21,088	48%
Projected FPI residential construction employment (including self employment, independent contractors and off-the-books employment) (5)	43,528	81,668	38,140	88%

Sources

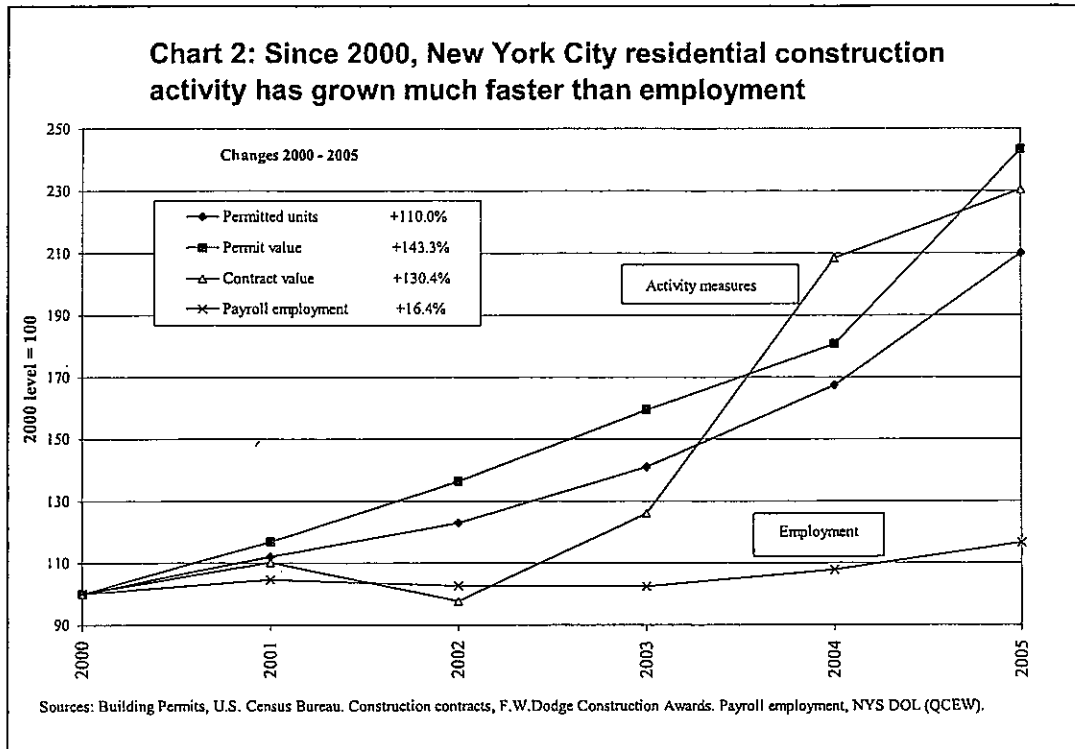
(1) U.S. Census Bureau, <http://censtats.census.gov/bldg/bldgprmt.shtml>

(2) F.W. Dodge Construction Awards, http://www.empire.state.ny.us/nysdc/Economic/Bus_Fact_Book_home.asp

(3) New York State Dept. of Labor, Quarterly Census of Employment and Wages (annual averages)

(4) FPI analysis of Current Population Survey (CPS) data. CPS self-employment data includes non-residential construction. FPI assumed that 40 percent was non-residential self-employment in 2000 and that this number (7,186) declined by 10 percent from 2000 to 2005 along with the broader decline in non-residential construction activity in New York City during this period. Thus, residential self-employment grew by an estimated 146 percent as shown above.

(5) See text.



And as noted before, 13,251 of the 21,100 increase in construction workers reflected in the government self-employment data between 2000 and 2005 might reflect misclassified workers, workers who are not really independent contractors and should be considered employees under New York State law. Putting the estimated 17,100 off-the-books workers together with the 13,251 misclassified workers equals over 30,000 workers illegally employed in residential construction, 37.1 percent of the projected 2005 employment level of 81,668.

5. The Underground Labor Market Begins with Employee Misclassification

Employee misclassification and off-the-books activity not only drive down the wages of workers but also lead to several other adverse fiscal and economic effects.¹⁹ Employers that misclassify workers or employ workers off the books may shave their costs but only at the expense of government which loses tax revenue and sees increased demands made on various government programs, and at the expense of other employers who operate within legal requirements and institutions providing labor protections (unemployment

¹⁹ In this report, employee misclassification refers to the practice of considering workers who are really employees as independent contractors. In the workers' compensation field, occupational misclassification has a different meaning: when an employee is considered as belonging to a different occupation that has a lower workers' compensation premium rate than the occupational class to which the worker should be assigned.

insurance and workers' compensation). These illegal activities also contribute to wage and income inequality through generalized pressure on less-educated workers. Employers engaging in misclassification and off-the-books activity do not really save costs; they just shift them onto workers, other businesses, government and society at large.

There is growing evidence that the misclassification of workers is on the rise. A February 2000 report prepared for the U.S. Department of Labor stated that:

The number one reason employers use independent contractors and/or misclassify employees is the savings in not paying workers' compensation premiums and not being subject to workplace injury and disability-related disputes.²⁰

The Planmatics study for the USDOL examined unemployment insurance employer audit data from nine states to gauge the extent of employee misclassification.²¹ Reflecting practices and perceptions regarding employee misclassification from the late 1990s, the report concluded: "The percentage of audited employers (across all industries) with misclassified workers ranged from approximately 10 percent to 30 percent."²² According to the interviews conducted by Planmatics researchers for this study, the construction industry was the industry in which the improper use of independent contractors was most widespread.²³ According to the U.S. General Accounting Office in a 1996 report, 20 percent of workers in the construction industry were misclassified.²⁴

Four studies conducted since 2000 show continued growth in misclassification. Researchers at the University of Massachusetts and Harvard University examined unemployment insurance audits in Massachusetts and Maine and reached similar conclusions for the two states. The Massachusetts study, for example, stated:

Across all industries, [at least] 13 percent of employers were found to underreport worker wages and unemployment insurance tax liability to the Commonwealth and thus to have misclassified workers.²⁵

In both the Massachusetts and the Maine studies, the incidence of employee misclassification was greater in construction than in other industries. In the

²⁰ Planmatics, Inc. "Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs," p. iii. Prepared for the U.S. Department of Labor, Employment and Training Administration, February 2000. See <http://wdr.doleta.gov/owsdrr/00-5/00-5.pdf>.

²¹ The states included in the Planmatics study were California, Colorado, Connecticut, Maryland, Minnesota, Nebraska, New Jersey, Washington, and Wisconsin.

²² Planmatics, p. iii.

²³ Planmatics, pp. 41-44.

²⁴ U.S. General Accounting Office, "Tax Administration: Issues in Classifying Workers as Employees or Independent Contractors," GAO/T-GGD-96-130.

²⁵ Francois Carre and Randall Wilson, "The Social and Economic Costs of Employee Misclassification in Construction," December 17, 2004, (<http://www.law.harvard.edu/programs/lwp/Misclassification%20Report%20Mass.pdf>). Carre and Wilson, "The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry," April 25, 2005 (<http://www.law.harvard.edu/programs/lwp/Maine%20Misclassification%20Maine.pdf>).

Massachusetts construction industry, for example, an estimated 14 to 24 percent of employers misclassified workers.

A recent study found that the practice of employee misclassification has grown rapidly since 2000.²⁶ Using audit data provided by the Illinois Department of Employment Security, a December 2006 study by researchers at the University of Missouri-Kansas City estimated that 8.5 percent of all employees in Illinois were misclassified as independent contractors in 2005, representing a 55 percent increase in the misclassification rate in Illinois from 2001 to 2005. This put the estimated number of misclassified workers in Illinois at 418,870 for 2005. The Illinois study found that misclassification was a significant factor for all employers found to have been misclassifying workers. For employers found to have misclassified workers, on average, well over one quarter (28 percent) of workers for such employers were misclassified. For the construction industry, the Illinois study estimated that one in five employers (19.5 percent) misclassified workers.²⁷

Using a methodology similar to the studies for Massachusetts, Maine and Illinois, Cornell University researchers recently conducted an analysis of New York State unemployment insurance audits for the years 2002 to 2005. The Cornell researchers estimated that 704,785 New York workers, or 10.3 percent of the workforce, were misclassified each year. In the construction industry, the study found that an estimated 45,474 workers—or 14.8 percent of the workforce—were misclassified as independent contractors in New York. For the industries included in the Cornell study for New York State, the average annual unemployment insurance tax underreported for misclassified workers amounted to \$175.7 million.²⁸

Employee misclassification creates significant problems for workers. Misclassified workers are not covered by workers' compensation or unemployment insurance and are liable for the full Social Security and Medicare payroll taxes (15.3 percent). They also lose access to employer-provided health and other benefits, such as retirement benefits and paid time off. Since misclassified workers are not considered employees, they lose protection against employment-related discrimination and do not have the right to form a union or bargain collectively. In the construction industry, independent contractor status precludes a worker's access to apprenticeship training opportunities.

²⁶ This confirms the preliminary analysis of U.S. Census Bureau non-employer data by the Fiscal Policy Institute. From 2000 to 2004, the number of non-employers in the U.S. grew by 3 million during a period when reported payroll employment declined by 1.2 million. In New York State, the number of non-employers increased 207,000 while payroll employment declined by 194,000 from 2000 to 2004. And within the construction industry in New York State, the number of non-employers increased by 13,400 while payroll employment declined by 5,100.

²⁷ Michael P. Kelsay, James I. Sturgeon, and Kelly D. Pinkham, "The Economic Costs of Employee Misclassification in the State of Illinois," A Report by the Department of Economics, University of Missouri-Kansas City, December 6, 2006.

²⁸ Linda H. Donahue, James Ryan Lamare, and Fred B. Kotler, "The Cost of Worker Misclassification in New York State," Cornell University ILR School, February 2007.

Employers who misclassify workers often gain an unfair cost advantage over employers who comply with legal requirements. This unfair cost advantage can be critical for construction contracts awarded to the lowest bidder. A low bidder who misclassifies workers as independent contractors is usually able to secure contracts only because they succeed in shifting their costs onto others, whether the workers, taxpayers, or law-abiding employers.

While the studies of misclassification are usually based on unemployment insurance audits, misclassification for unemployment insurance purposes almost always extends as well to the workers' compensation system. Workers compensation costs in construction are much higher than unemployment insurance premiums, and are paid on the full amount of payroll, not just the first \$8,500 of wages as is the case with New York's unemployment insurance program.

Since workers misclassified as independent contractors are known to underreport their personal income for tax purposes, the Illinois study estimated that the state lost from \$150 million to \$250 million in personal income tax collections in 2005 related to employee misclassification.²⁹

In addition to the growing problem of employee misclassification, it is likely that there has been a growth in off-the-books, underground economic activity in which transactions are performed on a cash basis and not easy to track or audit. By misclassifying employees as independent contractors, employers evade payroll costs and social insurance premiums and avoid responsibility for providing paid time off or any health or retirement benefits. Such employers thus have employee compensation costs that can range from one quarter to one third less than employers who properly classify their workers and who comply with legal requirements. Contractors who employ workers off the books also illegally save considerably on compensation costs, as well as further minimizing any associated paper trail regarding their illegal practices.

6. Labor Standards Enforcement Should Be a Check on the Underground Economy

Government in New York in recent years generally has done very little to enforce adequate labor standards. A recent report by the Fiscal Policy Institute on New York's workers compensation system identified two substantial state enforcement gaps: (1) with limited exceptions, all workers covered by the state's unemployment insurance system should also be covered by workers compensation yet an estimated 500,000 to 1 million workers in the unemployment system are not covered by workers compensation; and (2) tens of thousands of workers are illegally classified as independent contractors when they are in fact employees and their employers should be paying payroll taxes and social

²⁹ Michael P. Kelsay, James I. Sturgeon, and Kelly D. Pinkham, "The Economic Costs of Employee Misclassification in the State of Illinois," Department of Economics, University of Missouri-Kansas City, December 6, 2006.

insurance premiums.³⁰ The failure on the part of New York State government—particularly the State Labor Department and the Workers' Compensation Board—to adequately ensure compliance with state labor laws has eroded labor standards and has permitted the underground economy to proliferate.

Former Attorney General Eliot Spitzer brought several high profile enforcement cases involving workers paid less than the minimum wage or not paid adequately for overtime work. Under Spitzer, the Attorney General's office also brought some prevailing wage enforcement cases in the New York City construction industry. The prevailing wage cases involved publicly funded construction at the New York City Housing Authority or the New York City public school system.³¹ In late January 2007, Attorney General Andrew Cuomo and City Department of Investigations Commissioner Rose Gill Hearn announced guilty pleas by three construction contractors in a case involving renovation work for the Housing Authority taking place over a four-year period and involving underpayment of wages for 400 workers. The contractors were ordered to pay \$6.5 million in back wages and \$10.2 million in penalties.³²

In October 2005, Mayor Bloomberg's Commission on Construction Opportunity announced several recommendations to expand job opportunities in the New York construction industry. The Commission also recommended that the City ensure greater compliance with prevailing wage laws as they apply to the construction industry.³³ The Mayor issued Executive Order #73, Prevailing Wage Requirements in City Contracts, to implement this recommendation. Among other things, the executive order was intended to ensure that successful bidders on City contracts, and their subcontractors, prove that they will pay prevailing wages.³⁴ The Mayor's Office of Contract Services also issued a directive requiring bidders on City construction contracts to have appropriate apprenticeship systems in place.³⁵ However, in applying the directive regarding apprenticeship systems, the Mayor's Office has exempted the Department of Housing Preservation and Development (HPD), the main City agency subsidizing affordable housing.

Under New York State law, the City Comptroller in New York City has responsibility for enforcing State prevailing wage requirements within New York City.³⁶ However, HPD contends that many of the City's affordable housing programs are not subject to State

³⁰ Fiscal Policy Institute, *New York State Workers' Compensation: How Big Is the Coverage Shortfall?*, January 25, 2007. http://www.fiscalpolicy.org/publications2007/FPI_WorkersCompShortfall_Jan2007.pdf.

³¹ See the Office of the Attorney General website, various press releases announcing enforcement actions.

³² Office of the New York State Attorney General, "Contractors Admit Stealing More than \$6.5 Million in Wages from over 400 Workers on NYC Housing Authority Contracts," Press Release, January 26, 2007.

³³ See the Commission's recommendations, http://www.nyc.gov/html/sbs/html/press/pressrelease_100505.html.

³⁴ New York City Comptroller, Bureau of Labor Law, *Prevailing News*, May 2006, p. 4, Fall 2006, p. 3.

³⁵ Memo from Marla G. Simpson, Director, Mayor's Office of Contract Services, "Apprenticeship Program Requirements for Certain Construction Contracts," July 20, 2006.

³⁶ In 2006, City Comptroller William C. Thompson, Jr.'s office collected more than \$5 million in back wages for workers not paid in accordance with State prevailing wage law or New York City's living wage law. New York City Comptroller's Office, "Thompson Wins \$5 Million from City Contractors Who Cheated Workers," Press Release, January 29, 2007.

prevailing wage regulation by the City Comptroller.³⁷ While many of the City's affordable housing programs are subject to federal prevailing wage regulation according to HPD, the federal Labor Department, which enforces federal prevailing wage law, has done very little to enforce compliance. Thus, there have not been many prevailing wage enforcement cases brought involving publicly-subsidized affordable housing projects in New York City. Reportedly, the Comptroller's office has begun to investigate prevailing wage compliance at a number of HPD-funded construction sites in upper Manhattan and the Bronx. These sites are part of HPD's Tenant Interim Lease program, which is covered by the State prevailing wage law according to HPD.

But considering the likely scale of noncompliance with workers' compensation and unemployment insurance and of employers illegally misclassifying workers as independent contractors, there have been extremely limited enforcement efforts.

It does appear that New York State's enforcement of social insurance requirements and labor standards will improve markedly under Governor Spitzer. The landmark workers' compensation legislation signed by Governor Spitzer on March 13, 2007, added several enforcement measures intended to increase employer compliance with the state requirement to provide workers' compensation coverage. Failure to secure coverage is elevated to a felony violation and the maximum fine for a first offense was increased from \$2,000 to \$50,000. The chair of the state Workers' Compensation Board was given various explicit powers to aid in civil enforcement, including the power to subpoena business records and the power to issue stop work orders for failure to secure coverage or to pay penalties assessed. The legislation also called for greater coordination between the Workers' Compensation Board and state agencies, particularly Taxation and Finance, Insurance, and Labor, to ensure more effective enforcement.³⁸

New York can continue to learn from other states with aggressive strategies for identifying misclassified workers. In New Jersey, Governor Corzine has directed the Department of Labor and Workforce Development and the Department of the Treasury "to work together to ensure that employers don't misclassify their employees as independent contractors ..." and in 2005, more than 26,000 workers were found to be misclassified as independent contractors.³⁹ California has mounted an aggressive effort to curb the misclassification of workers as independent contractors and in order to identify potential noncompliance, the State of California requires businesses to provide all IRS form 1099s to the State.⁴⁰

³⁷ See "Labor Standards on HPD Construction Projects," in *Prevailing News*, Fall 2006, p. 3. See <http://www.comptroller.nyc.gov/bureaus/bll/newsletter/Dec06PrevailingNews.pdf>.

³⁸ For the New York State workers' compensation legislation, see <http://assembly.state.ny.us/leg/?bn=A06163>. For the Governor's press release regarding his signing the legislation into law, see <http://www.ny.gov/governor/press/0313071.html>.

³⁹ New Jersey Department of Labor and Workforce Development, "Update on Governor Corzine's Worker Misclassification Initiative," www.state.nj.us/labor/press/2006/0719WorkerMisclassification.htm.

⁴⁰ For example, see the notice by the California Division of Labor Standards, "Misclassification of workers as 'independent contractors' rebuffed by the California Court of Appeal," <http://www.dir.ca.gov/dlse/MisclassificationOfWorkers.htm>, downloaded February 12, 2007.

In the midst of a housing construction boom in 2003, the State of Florida reformed its workers' compensation system and launched an aggressive program to combat workers' compensation fraud. Florida

7. Estimating the Fiscal Impacts of the Underground Economy in New York City's Affordable Housing Construction Industry

This report has identified several factors that all point in the same direction, namely, that the housing construction boom in New York City has been accompanied by an increase in illegal employment practices. The discussion of employment trends presented earlier suggested that well over one third of the local residential construction workforce was misclassified as independent contractors or employed off the books. There are several indications that such illegally employed workers are concentrated in the residential, as opposed to non-residential, portion of the construction industry. And within the residential segment, such employment practices are most likely to occur in the affordable housing construction segment. Affordable housing units tend to be built by smaller contractors or to use small subcontractors. Up to now, however, there has been little indication of the significant enforcement of labor protections and standards in residential construction. Building safety enforcement likely will improve in the wake of the Mayor's Scaffold Worker Safety Task Force and enforcement to ensure social insurance compliance likely will improve under Governor Spitzer, particularly in light of the workers' compensation reform legislation.

The increase in illegal employment practices has been accompanied by considerable pressure to hold down the wages of many construction workers. As the first section of this report discussed, there has been a 30 percent decline in the inflation-adjusted wages of New York City construction workers since 1990. Only recently has there been any increase at all in the nominal wage paid workers at the 25th percentile level.

From the point of view of labor protections and wage levels, there is not a huge difference between employers who misclassify workers as independent contractors and those who employ workers off the books. Neither makes payroll tax payments or social insurance premium payments on behalf of such workers. Social insurance programs include unemployment compensation, workers' compensation and disability insurance. In New York State, private employers are required to provide coverage for all three social insurance programs. Generally, employers who do not make payroll tax or social insurance premium payments deprive workers of coverage under these programs. Since Social Security and Medicare are general safety net programs, most workers will be eligible for at least minimum benefits, regardless of the payroll taxes paid in on their behalf. Workers injured on the job can qualify for workers' compensation benefits even if their employer has not made premium payments on their behalf. Such workers are paid out of a special fund financed through an assessment on premiums paid by employers providing regular workers' compensation coverage. In any case, there is a fiscal cost, or

now has nearly 100 investigators in its anti-fraud campaign that targets employers who attempt to evade the legal mandate to provide their employees with workers' compensation coverage, including those who claim their workers are independent contractors. Florida Department of Financial Services, Division of Insurance Fraud and Division of Workers' Compensation, "Joint Report to the President of the Florida Senate and the Speaker of the Florida House of Representatives," January 1, 2007, http://www.fldfs.com/WC/pdf/01-01-07_Joint_report.pdf.

revenue loss, to government that results from employers not making payroll tax or social insurance premium payments.

There is also likely to be cost-shifting involving health care costs that results from employers who illegally employ workers. Since the affected workers will not have employer-provided health insurance, the workers are left to fend for themselves. Given their low wages, such workers likely would qualify for Medicaid coverage; however, many will not avail themselves of that. If they cannot qualify for Medicaid, and they are injured on the job or otherwise require medical assistance, emergency rooms will provide uncompensated health care services. Medicaid and uncompensated care both involve the shifting of costs from employers illegally employing workers to taxpayers and employers providing health coverage to their employees.

This final section of this report develops estimates of the fiscal impacts of the underground economy in New York City's affordable housing construction industry. Five steps are involved in estimating the fiscal impacts. First, drawing on the discussion of residential construction employment trends presented earlier in this report, an estimate of the number of workers engaged in the affordable housing construction segment of the industry is developed, including a distribution for five categories of wage and tax compliance status. Second, per worker payroll taxes and social insurance premiums are calculated for workers at the three different hourly wage levels used in this analysis. Third, industry-wide estimates are made of the payroll taxes and social insurance premiums lost due to employer noncompliance with applicable employment laws. Fourth, since most of the workers involved in this industry do not have employer-provided health insurance, estimates are made of the health care costs shifted to Medicaid and other payers. Fifth and finally, the amount of personal income tax liability is estimated for workers at different hourly wage levels and estimates are made of the lost personal income taxes for a portion of workers who are assumed to be noncompliant in paying income taxes.

The calculations for lost payroll taxes, social insurance premiums, and personal income taxes are made in relation to both current wage rates and against a minimal \$14.00 an hour wage standard applied to workers making below that at present.

Table 2 shows the estimated number of workers in the New York City affordable housing sector and the distribution of workers by employment and tax status. These estimates are based on FPI's examination of several government data sources.

Table 2: Estimates of NYC Affordable Housing Workforce, by Category of Worker

<i>category of worker</i>	share of workforce	# of workers	hourly wage *
Union worker	5.1%	675	\$24.70
Non-union employee	27.5%	3,675	\$14.00
Misclassified "independent contractor" paying own payroll taxes	17.8%	2,375	\$10.00
Misclassified "independent contractor" not paying payroll taxes	17.8%	2,375	\$10.00
"Off-the-books" worker	31.8%	4,250	\$10.00
Total, all workers	100%	13,350	\$11.84

* Hourly wage rates are detailed in the text and the notes to Table 3.

Source: Estimates by Fiscal Policy Institute, March 2007.

As discussed earlier, based on measures of construction activity, total residential construction employment was estimated to be slightly less than 82,000 in 2005 (although payroll data show much lower figures). It was assumed that renovation work accounts for one third of residential construction activity, and that it has grown along with new construction since 2000. Of the 54,500 construction workers needed for new residential construction, roughly one quarter were assumed to constitute the new affordable housing construction sector. (See Appendix Table 1.)

This calculation yields an estimate of 13,350 workers needed to construct the volume of new affordable housing built in 2005. This includes workers misclassified as independent contractors and workers paid off the books. Recall that the estimated number of residential construction workers paid off the books was derived as the difference between the projected employment needed to build the amount of residential units indicated by the permit data and the official payroll employment and self-employment data. The number of workers misclassified as independent contractors was assumed to be half of the reported self-employment level in residential construction. The distribution of the 13,350 construction workers building affordable housing by category of worker was estimated using all the available data and making plausible assumptions about the magnitude of employment in each category.

Fiscal estimates are made for workers at three possible wage levels applicable to the residential construction industry.

- \$10.00 an hour. Worker misclassified as an independent contractor or simply paid off the books. This wage level is deemed the customary rate for many such workers in the affordable housing segment of the residential construction industry according to several industry observers and journalists who have interviewed workers and is consistent with the CPS wage data. In this analysis, it is assumed that two-thirds (67.4 percent) of affordable housing construction workers are paid \$10.00 an hour.
- \$14.00 an hour. Typical non-union worker paid on the books by an employer as an employee. This is the median hourly wage for non-union New York City construction workers according to the Current Population Survey data, 2006. It is assumed that slightly more than a quarter (27.5 percent) of workers are paid \$14.00 an hour.
- \$24.70 an hour. Union worker paid at a market recovery wage rate reflecting a 5-2 blend of the wage rates paid to journey persons and apprentices (a 5-2 blend means 2 apprentices can work on a job for every 5 journey persons).⁴¹ Union sources indicate that fewer than 1,000 union workers are employed on projects building affordable housing in New York City. For this analysis, it is assumed that 5.1 percent of affordable housing construction workers are union.

For each category of worker, Table 3 shows the total annual amount of payroll taxes and social insurance premiums that should be paid, given the wage rate involved. Workers' compensation premiums represent the single largest component. According to the New York Compensation Insurance Rating Board, the premium rate, including assessments, is \$14.67 dollars per \$100 dollars of payroll in residential construction. At a wage level of \$10 an hour, an employer should be paying a workers' compensation premium of \$2,699 per year. At the union market recovery average hourly rate of \$24.70, the workers' compensation premium totals nearly \$6,677. Including all payroll tax and social insurance premium payments produce a total of about \$6,007 for a \$10 an hour construction worker, ranging up to \$14,113 annually for a union construction worker.

⁴¹ The "market-recovery" contract rates are below standard New York City non-residential construction contract rates and represent an effort by building trades unions to recapture market share. The market-recovery rate used here is a blended hourly rate based on the carpenters' pay scale which is in the middle range among construction trades, higher than laborers and painters, but lower than electricians and plumbers. The journey-person-to-apprentice ratio is established by the New York State Department of Labor. Most union workers building affordable housing in recent years have been paid at rates above the market-recovery rates.

Table 3: Per Worker Payroll Taxes and Social Insurance Premiums, NYC Affordable Housing Construction Sector

		Union worker (a)	Non-union construction employee (b)	Misclassified independent contractor or off-the-books worker
Hourly wage		\$24.70	\$14.00	\$10.00
Per year, 1840 hours		1,840	1,840	1,840
Annual wages		\$45,448	\$25,760	\$18,400
	payroll rate (c)			
FICA	0.1240	\$5,635.55	\$3,194.24	\$2,281.60
Medicare	0.0290	\$1,317.99	\$747.04	\$533.60
Unemployment insurance (d)	0.0480	\$408.00	\$408.00	\$408.00
Federal Unemployment Tax (e)	0.0080	\$56.00	\$56.00	\$56.00
Disability (f)	0.0016	\$28.29	\$28.29	\$28.29
Workers' compensation (g)	0.1467	\$6,667.22	\$3,778.99	\$2,699.28
Annual payroll taxes and social insurance premiums if employers comply with NYS law (h)		\$14,113.05	\$8,212.56	\$6,006.77
Annual payroll taxes if paid by misclassified independent contractor				\$2,815.20

Notes:

(a) The \$24.70 hourly rate is a "market recovery" union wage rate that blends rates for journey persons and apprentices, and is based on the Carpenters pay scale which is in the middle range among construction trades. In the affordable housing sector, the small number of union workers typically work on 80-20 projects and earn a standard union contract rate, not the lower market recovery rate.

(b) Median non-union hourly wage in construction, 2006, Current Population Survey, FPI analysis.

(c) Payroll rates for FICA and Medicare are evenly shared between employer and employee, except in the case of a misclassified independent contractor.

(d) According to the NYS Department of Labor, the average unemployment premium rate for NYC residential construction employers in 2006 was 4.8%. Unemployment insurance premiums are paid only on first \$8500 of annual wages.

(e) FUTA is paid only on the first \$7000 of annual wages.

(f) Under the NY State Insurance Fund, disability premiums for men are 16 cents per \$100 of wages, and are payable up to a maximum annual wage of \$17,680.

(g) According to the New York Compensation Insurance Rating Board, the premium rate, including assessments, in residential construction is \$14.67 per \$100 of wages.

(h) This calculation is before application of federal or NYS prevailing wage requirement, if applicable.

Source: Estimates by Fiscal Policy Institute, March 2007.

Table 4: Lost Payroll Taxes and Social Insurance Premiums Due to Construction Employer Non-Compliance, NYC Affordable Housing Sector

(\$ millions)	Lost Payroll Taxes and Social Insurance Premiums			
	share of workforce	# of workers	vs. employers paying payroll taxes at current wage rates	vs. all workers at least 150% of poverty wage level (\$14.00)
<i>category of worker</i>				
Union worker	5.1%	675	\$0.0	\$0.0
Non-union employee	27.5%	3,675	\$0.0	\$0.0
Misclassified "independent contractor" paying own payroll taxes	17.8%	2,375	\$ 7.6	\$12.8
Misclassified "independent contractor" not paying payroll taxes	17.8%	2,375	\$14.3	\$19.5
"Off-the-books" worker	31.8%	4,250	\$25.5	\$34.9
Total, all workers	100%	13,350	\$47.4	\$67.2

Source: Estimates by Fiscal Policy Institute, March 2007. See Table 2 for per worker estimates.

Table 4 uses the per worker payroll tax and social insurance premium data from Table 3 to estimate the public costs in lost payroll taxes and lost social insurance premium payments. At current wage rates, lost payroll taxes and social insurance premium payments for misclassified independent contractors and off-the-books workers total \$47.4 million per year. In relation to the \$14.00 an hour minimal standard, that is, assuming all affordable housing construction workers make at least that wage and that all employer legal obligations are met, the estimate of lost payroll taxes and social insurance premiums rises to \$67.2 million.

The low wages paid to many workers in affordable housing construction, particularly given the hazardous nature of construction work, also imply public costs in other ways. Such low paid workers may qualify for food stamps or other forms of public assistance. Arguably, these workers should be paid at least an hourly wage of \$14.00. This would bring them to 150 percent of the federal three-person poverty level (\$14 an hour times 1840 hours per year equals \$25,760).

The public also bears the cost of providing health coverage to the non-union affordable housing construction workforce. Generally, in New York City's construction industry, only unionized workers have employer-provided health insurance.⁴² U.S. Labor

⁴² A recent United Hospital Fund report that provides the most detailed data on health insurance coverage in New York does not provide data on coverage by industry for New York City. In New York State, 33.9 percent of construction workers were uninsured in 2003-2004. This is the highest for the nine industry

Department data indicate that construction industry in New York City has a much higher than average incidence of occupational injuries than other industries. In 2004, male construction workers accounted for 13.9 percent of occupational injuries and illnesses suffered by male New York City private sector workers, nearly four times the construction share of NYC private employment (3.7 percent). In 2005, construction accounted for 28 percent of fatal occupational injuries among New York City males.⁴³

Table 5 provides estimates of the health care costs shifted to other payors by construction employers not providing health insurance. For the roughly 95 percent of affordable housing construction workers without employer health insurance, it is assumed that one fourth receive coverage under Medicaid and a slightly lower portion, one fifth, receive uncompensated health care services.⁴⁴ Thus, the estimated cost to taxpayers of providing Medicaid coverage to roughly 3,200 construction workers in the affordable housing sector is \$19 million annually, and the cost of providing uncompensated health care services to 2,500 workers is \$6.3 million annually.

groupings presented. Very few New York City adults with incomes below 200 percent of poverty have employer-provided health insurance: 39 percent are uninsured and 33 percent have Medicaid. United Hospital Fund, "Health Insurance Coverage in New York, 2003-2004," November 2006.

⁴³ U.S. Department of Labor, Bureau of Labor Statistics.

⁴⁴ Medicaid costs per non-elderly adult average \$6,000 annually in New York City. The cost of uncompensated health care services provided affordable housing construction workers was estimated by FPI at \$2,500 per worker receiving uncompensated care. Articles consulted in developing this estimate include: Randall R. Bovbjerg, et.al., "Caring for the Uninsured in New York," Urban Institute, October 2006, and C. Jeffrey Waddoups, "Employer Sponsored Health Insurance and Uncompensated Care: An Updated Study of the University Medical Center in Clark County (Las Vegas)," July 2001.

Table 5: Health Care Costs Shifted to Medicaid and Other Payors by Non-Compliant Construction Employers, NYC Affordable Housing Sector

(\$ millions)

<i>category of worker</i>	share of workforce	# of workers	Public cost of Medicaid coverage for 1/4 of workers without health insurance (a)	Cost of uncompensated health care shifted to other payors for 1/5 of workers without health insurance (b)
Union worker	5.1%	675	\$0.0	\$0.0
Non-union employee	27.5%	3,675	\$5.5	\$1.8
Misclassified "independent contractor" paying own payroll taxes	17.8%	2,375	\$3.6	\$1.2
Misclassified "independent contractor" not paying payroll taxes	17.8%	2,375	\$3.6	\$1.2
"Off-the-books" worker	31.8%	4,250	\$6.4	\$2.1
Total, all affordable housing construction workers	100%	13,350	\$19.0	\$6.3

(a) Assumes that a quarter of workers without employer-provided health insurance sign up for Medicaid and that the annual cost of Medicaid-covered health care they receive is \$6,000.

(b) Assumes a fifth of workers without employer-provided health insurance receive health care services that fall into the "uncompensated care" category. In New York, the costs for uncompensated care are borne by health care providers (hospitals and clinics) and, through the Health Care Reform Act's uncompensated care surcharge, by employers that provide health insurance to their workers. Given the high incidence of construction accidents, this cost was estimated at \$2,500 per worker receiving uncompensated care.

Source: Estimates by Fiscal Policy Institute, March 2007.

Under New York State's Health Care Reform Act (HCRA), employers providing health insurance to their employees, such as union construction employers, are mandated to pay a surcharge on certain medical expenses to help cover the cost of uncompensated health care, including the health care for employees of employers not providing health insurance. Thus, under this perverse state provision, responsible employers providing health insurance to their employees, in effect, pay several hundred dollars per worker to cover medical costs for the employees of their competitors who do not provide health coverage.

The high incidence of illegal employment practices in affordable housing construction also suggests the likelihood of lost personal income tax payments. Workers paid on a

cash basis, off the books, are unlikely to pay personal income taxes and many workers misclassified as independent contractors probably fail to report all of their earnings. Only workers officially on a business's payroll records have federal, state and local income taxes withheld from their pay. Table 6 presents estimates of the additional personal income taxes that would be paid, or owed, by affordable housing construction workers if all were legally employed on a payroll employment basis and were, thereby, subject to withholding. The estimates in Table 6 assume that all workers currently subject to withholding pay income taxes and that one half of the workers misclassified as independent contractors pay income tax.⁴⁵ (Appendix Table 2 provides estimates of the income taxes paid by these workers.)

Given current wages rates, lost income taxes are estimated at \$12.5 million, with \$4.8 million of that representing New York state and city income taxes. If all workers were paid at the minimal standard level of \$14 an hour, the estimate of lost income taxes would rise to \$33.2 million. For the latter estimate, New York's share is \$12.8 million.

Table 6: Lost Income Tax Collections Given Current Wage Levels and Compared to 3-person Poverty Wage Level

(\$ millions)

Lost Income Tax Collections Assuming All Workers Paying Income Taxes, Depending on Assumed Wage Level (\$millions)	vs. workers paying income taxes at current wage rates	vs. all workers at least 150% of 3-person poverty wage level
Federal income tax	\$7.7	\$20.4
New York State income tax	\$2.7	\$7.7
New York City income tax	\$2.1	\$5.1
Subtotal, New York income taxes	\$4.8	\$12.8
Grand Total, All Income Taxes	\$12.5	\$33.2

See Appendix table for detailed estimates by worker category.

Note: These estimates do not include business income tax payments.

Source: Estimates by Fiscal Policy Institute, March 2007 (based on 2005 tax tables).

⁴⁵ The personal income tax calculations assume full-year New York City residency and are based on city, state and income tax liability for a single worker with no dependents.

Table 7 summarizes the three sets of fiscal costs presented in Tables 4, 5 and 6. The total fiscal costs range from \$85.3 million to \$125.8 million. The lower figure represents the various costs based on current wage levels. The higher figure represents the sum of the costs and foregone taxes and premium payments compared to a scenario where the entire affordable housing workforce is paid based on minimal standard wage of \$14 an hour.

Table 7: Summary Table: Lost Payroll Taxes, Social Insurance Premiums, Personal Income Tax Collections, and Health Care Costs Shifted to Others, NYC Affordable Housing Construction

(\$ millions)	based on current wage rates	based on all workers receiving at least \$14/hour (150% of poverty)
Lost payroll taxes and social insurance premiums	\$47.4	\$67.2
Health care costs shifted to other payors	\$25.4	\$25.4
Lost income tax collections	\$12.5	\$33.2
Grand total, lost payroll taxes, social insurance premiums, and personal income taxes, and health costs shifted to others	\$ 85.3	\$125.8

Source: Estimates by Fiscal Policy Institute, March 2007. See Tables 4, 5 and 6.

Conclusion

In examining all of the published data on activity and employment in the New York City residential construction industry, this report concludes that approximately two thirds of the employment in the city's affordable housing construction industry represents illegal employer practices, either workers misclassified as independent contractors or off-the-books employment. This means that an estimated 9,000 workers are misclassified or employed off the books in the affordable housing construction sector out of a total workforce of about 13,350. Solid data on employment trends in this industry do not exist and these figures are only rough estimates. Many assumptions had to be made to generate these estimates. Readers are encouraged to challenge these assumptions and to provide data that can be used to improve on these estimates.

As the level of activity in the affordable housing construction industry has grown substantially in New York City in recent years, accidents resulting in a growing number of deaths have increased and necessitated a strong response from government. Despite the dangerous working conditions in this industry, wage levels are extremely low, particularly by standards for the construction industry. The low wages paid in the affordable housing construction industry have contributed to the 30 percent decline in inflation-adjusted wages for New York City construction workers since 1990. For the lowest paid quarter of New York City construction workers, nominal wages have barely changed over the past fifteen years.

Beyond the steep decline in real wages, workers in the affordable housing construction industry are consigned to a secondary tier of the labor market with limited opportunities to acquire new skills or to move up a career ladder. Very few workers in this industry have health benefits and, if the estimates in this report are plausible, most workers are not covered by workers' compensation, unemployment insurance or state-mandated disability insurance. Most workers do not have payroll taxes paid on their behalf by their employers, and employers are not withholding income taxes from wages paid. It appears that many contractors may be completely out of compliance with the various labor standards requirements that have existed in New York State for decades.

Just because the wages are low does not mean that costs are low. Contractors pay construction workers low wages and shift substantial economic costs onto workers, and shift considerable fiscal costs to other construction employers and taxpayers generally. These costs may not be reflected in the price of the contract or the cost of the housing unit, but they are certainly real and borne elsewhere in the economy. Workers bear the brunt of these costs through low wages, hazardous working conditions and the lack of social insurance or fringe benefits. But there are also costs that push up workers' compensation premiums for other employers, health care costs are shifted to taxpayers or businesses that provide their employees with health insurance, and tax collections are less because these contractors are evading legal requirements.

Affordable housing construction under these labor conditions entail several economic costs that are not quantified in this report. They are nonetheless real. Unfair competition is created for businesses that comply with the law and pay their workers decent wages with benefits. Employment conditions like those in affordable housing construction put downward pressure on wages for many workers in the New York economy who have limited formal education or limited English language skills.

Part of the construction industry in New York City is linked to an employer-funded apprenticeship training system that provides New York City residents the opportunity to receive valuable vocational skills and safety training that can lead to much better compensated employment opportunities and provides a pathway into the middle class.⁴⁶ Almost all of the affordable housing construction activity in New York City is completely outside of this apprenticeship system.

The City of New York plays a major role in the affordable housing construction sector through the subsidies it provides to stimulate the construction of affordable housing for New Yorkers. Affordable housing is justifiably a top priority of City government. (Because their pay is so low, many construction workers building affordable housing would not even qualify under some of the City's affordable housing programs.) Over the past four years, the City has subsidized the construction of 6,000 units of affordable housing a year. The number of housing units the City will support annually will nearly double over the next six years.

New York City government should take responsibility for the working conditions that have been created in this sector and work with the State of New York to begin enforcing labor standards and addressing working conditions and the poor pay and benefit practices that exist in the affordable housing construction sector. The City has moved aggressively to address hazardous scaffold safety problems in construction. The logical next step is to recognize and begin addressing pervasive non-compliant labor practices. With the passage of several anti-fraud enforcement provisions in the historic workers' compensation reform legislation signed into law in mid-March, the State is also poised to dramatically improve labor standards enforcement.

Enforcement efforts should be pursued in a fashion that benefits an often vulnerable workforce that includes many minority workers long shut out of opportunities for good-paying jobs, skill development and advancement, or who are recent immigrants.

⁴⁶ For example, under the Carpenters Union contract, union employers contribute 60 cents for every hour worked to fund an extensive apprenticeship training program.

Appendix Table 1: Estimates of NYC residential construction workforce
By industry segment, 2005

<i>category of worker</i>	residential construction industry segment				
	All residential construction employment	Residential renovation construction	New residential construction	New affordable housing construction *	New market rate housing construction
Payroll employment	38,100	2,550	35,550	4,350	31,200
Self-employment	13,250	11,925	1,325	250	1,075
Misclassified independent contractors	13,250	1,325	11,925	4,750	7,175
Off-the-books workers	17,100	11,400	5,700	4,250	1,450
Total, all workers	81,700	27,200	54,500	13,600	40,900

* For affordable housing construction, Tables 2 through 7 leave aside the estimated 250 self-employed for a total affordable housing construction workforce of 13,350.

Source: Estimates by Fiscal Policy Institute, March 2007. Methodology available on request.

Appendix Table 2: Personal Income Taxes, NYC Affordable Housing Construction

Single worker, no dependents, not eligible for EITC

	Non-union construction employee*	Misclassified independent contractor, income tax compliant	Misclassified independent contractor, <u>not</u> tax compliant	"Off-the-books" worker, <u>not</u> tax compliant	Union worker	
Gross Wages	\$25,760	\$18,400	\$18,400	\$18,400	\$45,448	
Income Tax Liability, Individual Worker						
Federal income tax	\$2,271	\$1,169	\$0	\$0	\$5,971	
New York State income tax	\$851	\$407	\$0	\$0	\$2,204	
New York City income tax	\$571	\$318	\$0	\$0	\$1,272	
Subtotal, New York income taxes	\$1,422	\$725	\$0	\$0	\$3,476	
Grand Total, All Income Taxes	\$3,693	\$1,894	\$0	\$0	\$9,447	
	Non-union construction employee*	Misclassified independent contractor, income tax compliant	Misclassified independent contractor, <u>not</u> tax compliant	"Off-the-books" worker, <u>not</u> tax compliant	Union worker	Total, all workers, affordable housing construction
Number of workers in each category	3,675	2,375	2,375	4,250	675	13,350
Income Tax Liability, All Workers (\$ millions)						
Federal income tax	\$8.3	\$2.8	\$0.0	\$0.0	\$4.0	\$15.2
New York State income tax	\$3.1	\$1.0	\$0.0	\$0.0	\$1.5	\$5.6
New York City income tax	\$2.1	\$0.8	\$0.0	\$0.0	\$0.9	\$3.7
Subtotal, New York income taxes	\$5.2	\$1.7	\$0.0	\$0.0	\$2.3	\$9.3
Grand Total, All Income Taxes	\$13.6	\$4.5	\$0.0	\$0.0	\$6.4	\$24.4

Note: These estimates do not include business income tax payments.

Source: Estimates by Fiscal Policy Institute, March 2007 (based on 2005 tax tables).



The Fiscal Policy Institute is a nonpartisan research and education organization that focuses on tax, budget, and economic issues that affect the quality of life and the economic well being of New York State residents.

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**New York City Council
Committee on Housing and Buildings
Hearing on Intro 730
January 30, 2012**

**Testimony of
Ted Houghton
Supportive Housing Network of New York**

Good afternoon. My name is Ted Houghton, and I am the Executive Director of the Supportive Housing Network of New York. The Network is the member association representing over 200 nonprofit providers and developers who operate more than 43,000 supportive housing units throughout New York State, including over 24,000 units in New York City.

Thank you for the opportunity to testify in opposition to Intro 730, a proposal to amend the administrative code of the City of New York, in relation to the disclosure of certain information regarding certain construction projects. While we are in favor of increasing transparency in regard to City agency spending and operations, we are concerned that much of the reporting this bill proposes to require is duplicative, not particularly useful, and unfairly burdensome to nonprofits, developers and small contractors.

Introduction

Supportive housing is the solution to homelessness. Permanent, affordable efficiency apartments linked to on-site services, supportive housing is the proven, cost-effective and humane way to provide stable homes to individuals and families who have difficulty finding and maintaining their places in housing. Supportive housing achieves miracles in the lives of its tenants, allowing disabled individuals who have spent years living on the streets, or locked away in institutions to live full, rewarding lives integrated into our communities. Supportive housing gives them the stability, support and sense of community they need to reunite with their families, become healthier, and in many cases secure employment. Supportive housing changes and saves lives every day.

Equally important, supportive housing saves taxpayers' money. The people we house and serve – people with mental illness, HIV/AIDS, substance abuse, and other barriers to independence – are typically frequent users of expensive emergency services like shelters, hospitals, prisons and psychiatric centers. These publicly funded interventions can be very expensive, with hospitals and psychiatric centers costing upward of \$1,000 a day. Placement into supportive housing stabilizes tenants and has been proven to reduce use of these expensive services.

As a result, supportive housing decreases public spending, often far more than what had been spent building, operating and providing services in the housing. This has been proven, time and time again, by dozens of peer-reviewed academic studies. A focus on chronically homeless individuals has allowed New York's supportive housing to often achieve

measurable savings of tens of thousands of dollars per person per year, particularly when the housing is targeted to people with chronic health conditions. Its demonstrated effectiveness has made supportive housing an integral component in the State, City and federal plans to reduce homelessness and spending on expensive emergency interventions.

Supportive housing's proven, measured success has given the Network's nonprofit members the public support we need to build hundreds of residences for formerly homeless and institutionalized individuals and families.

But we still have much more to do. By any reasonable estimates, we need to build twice as many units as we have now to adequately house New York's homeless disabled individuals and families. And the need is growing. After years of modest but steady reductions in the single adult shelter system, attributable in no small part to supportive housing, the economic downturn has increased homelessness in New York City to record levels this year.

In the face of shrinking resources and growing need, the Network has spent much time and energy figuring out ways to do more with less. We've spent the last two years working with HPD to identify and understand bottlenecks in the development and construction process. With our partners at the agency, we have helped to improve oversight procedures and reduce the time it takes to secure financing, assemble a development team, commence and complete construction, obtain change orders, and get final sign-offs on inspections.

As a result, HPD and Network members are saving time and money, building supportive housing faster and less expensively.

It is in this context that we have reviewed Intro 730. Although we are in favor of greater transparency in government operations and spending, we are concerned about the bill as currently written because of the increased administrative burden, its disproportionate impact on smaller and nonprofit developers, and its effect on HPD's capacity, as well as the unintended consequences and potential misuse of the information in the database.

1. **Heavy Administrative Burden:** The bill's new additional reporting requirements are likely to slow the development process further. The bill would require developers, contractors, subcontractors, as well as building professionals such as lawyers, architects, accountants, engineers and other consultants, to report weekly wages paid to all employees working on a project. This would be an extraordinary, unprecedented administrative burden that would be imposed at a time when many companies in the housing industry are struggling. The bill would cover repair projects costing as little as \$100,000, but even for large projects, the proposed requirements would require organizations already overwhelmed by paperwork to create new tracking systems and hire additional staff.
2. **Disproportionate Effect on Small Organizations:** While some larger contractors may be able to break out all work by employees on a project by project basis, the reporting requirements would be especially burdensome for nonprofit developers, smaller contractors and subcontractors, and smaller professional offices that do not have this capacity. Many of these firms are already forced to forgo working on projects with prevailing wage requirements because they do not have the capacity to comply with the existing regulations. Imposing additional requirements will make

them even less able to compete for projects and will hurt their opportunities to grow their businesses.

3. **Creation and Maintenance of Database:** Maintaining a database of this scope will require additional staff and resources at HPD, an agency that is already trying to manage a large development pipeline with a depleted staff. Much of the information is presently available from HPD, including project names, addresses and descriptions, developers, general contractors, development award amounts and other data; housing code violations are available on a database maintained by the NYC Department of Buildings. This comes at a time when Congress has just slashed funding that HPD uses to pay its administrative costs.
4. **Unintended Consequences:** Publicly listing some of the information could have unintended consequences. It could: increase instances of identity theft and agency liability; restrict developers' ability to select and manage contractors; and dissuade good developers, contractors and many professionals from working with the City. A public listing of the kind described in the bill may help improve oversight of HPD development. But there is already extensive oversight of construction and development at HPD, for both prevailing wage and non-prevailing wage projects. Many developers and contractors are reluctant to work with HPD because the administrative hurdles add costs, risk and unpredictability to the process. These new reporting requirements are likely to further reduce the number of contractors willing to work with the agency; a smaller pool of bidders is likely to drive up costs further. Language in the bill appears to attempt to extend City procurement rules on a developer's choice of contractor. Assembling a development team is a complex process involving considerations of cost, competence, capacity and sustainability. A developer's ability to do this is the primary reason we use private and nonprofit developers rather than have affordable housing built directly by City employees. The contract awarding process already has many safeguards in place to ensure that developers select competent contractors at the lowest price. The proposed requirements are likely to undermine this process and make it more difficult to assemble the many contractors and development partners necessary for a successful development.
5. **Misuse of Information to be Collected:** We are unconvinced that the information the bill proposes to collect will improve HPD and the Council's ability to better monitor housing developers and contractors. But we are deeply concerned that this type of information posted publicly will be used to unfairly malign nonprofit and private developers and contractors who are doing their best to comply with labor laws while building quality affordable housing in a cost-efficient manner. While there may be unethical contractors who do not comply with regulations in any system as large as HPD's, we have seen an unfortunate increase in public campaigns attacking good people with scurrilous, unproven allegations and implications of improper relationships. More often than not, the investigations conclude with no wrongdoing found, or at best, some citations for administrative mistakes. Frankly, the bill's requirements for lists of unproven allegations, years of past housing code violations, disqualifications and suspensions, and for procurement process information all appear to be requests for a one-stop shop of information that could be used to smear and intimidate nonprofit and for-profit developers and contractors. Attacks of these types reflect badly on the affordable housing community as a whole,

further eroding support and resources for the important endeavor of building affordable housing.

The Supportive Housing Network of New York represents nonprofit developers and operators of permanent housing for formerly homeless people. While we partner with private contractors and often participate in joint ventures with private developers, we are sometimes in competition with them as well. From one perspective, more transparency in HPD's development process could be seen as helping nonprofit developers compete for scarce development resources to build housing for homeless people.

But as written, Intro 730 appears to do little to improve oversight, but much to increase bureaucracy and paperwork. It will take away dollars that could be spent on construction and direct them to an additional layer of oversight. It will disadvantage smaller developers and nonprofits that are historically more sensitive to the needs of their communities, and who go out of their way to hire from the neighborhoods surrounding a project. Nonprofits have had to adapt to an increasingly competitive environment that is making it more and more difficult for us to develop affordable housing. This bill could be the thing that finally stops many of the Network's members from continuing to build supportive housing.

Given the long successful history of nonprofit affordable housing development, this would indeed be unfortunate. And somewhat ironic, as the Network's nonprofit developers have historically been supportive of prevailing wage requirements in affordable housing construction. Because supportive housing is the most likely to have federal funding sources, it is the most likely to comply with Davis-Bacon prevailing wage rules. Approximately 90% of the residences we build with HPD financing are prevailing wage projects.

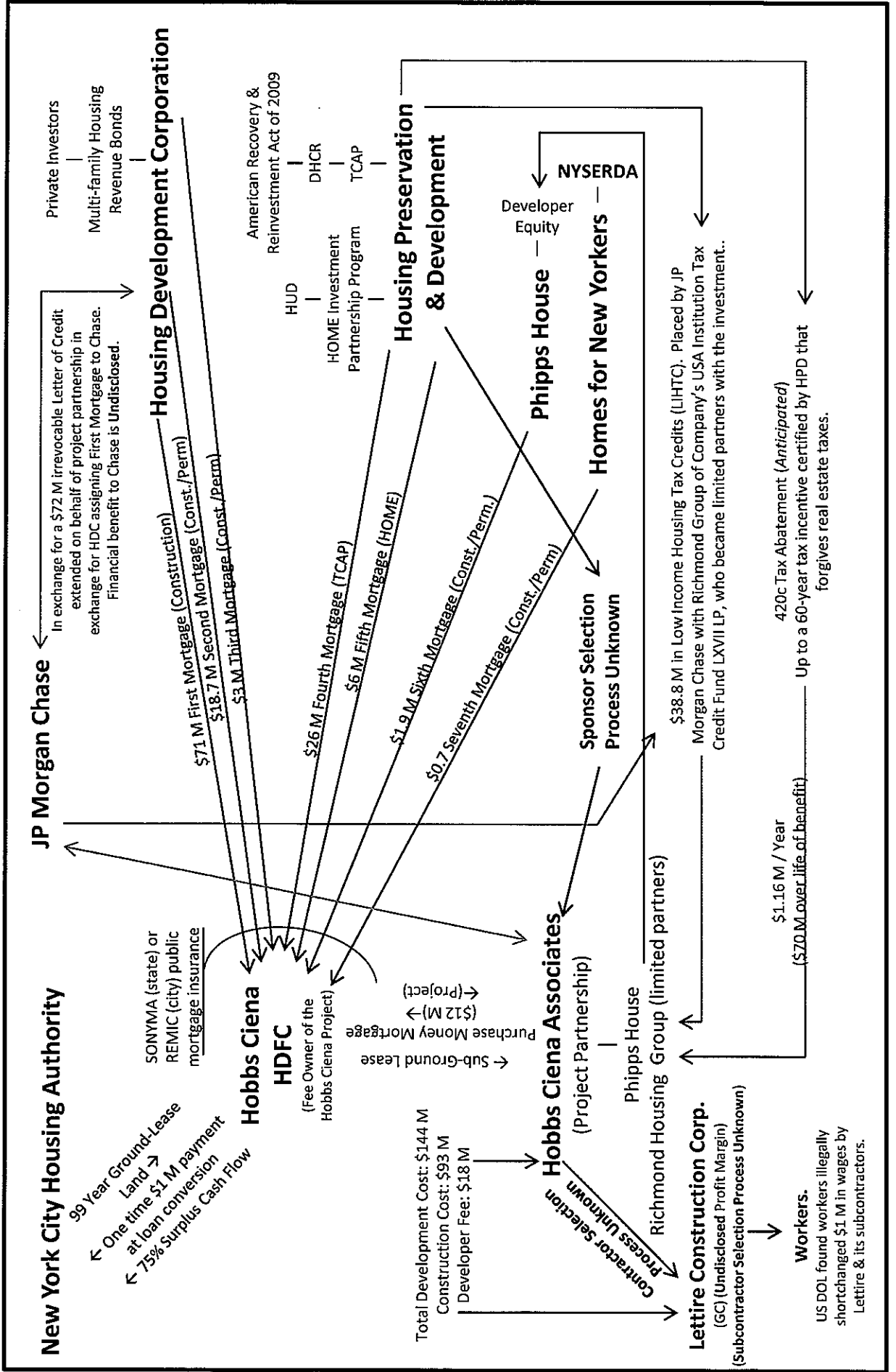
We are happy to continue to build prevailing wage and support prevailing wage rules, even though to do so can sometimes be frustrating. The fact is, according to a review of five years of supportive housing development, prevailing wage increases the length of time it takes to develop supportive housing by six months on average. Prevailing wage also adds 20-30% to the total cost of construction, and since this additional cost must be paid with City capital subsidies, it has the effect of doubling the amount of City Tax Levy required to build each unit of housing.

Today, the nightly homeless shelter census in New York City passed the 40,000 mark for the first time. Nevertheless, Congress cut federal HOME capital dollars for housing construction by 38%, which resulted in real cut to HPD of 46%. All the other important sources of funding for supportive housing development, from State dollars, Section 8 rental subsidies and McKinney Vento Homeless funds are similarly threatened. In this environment, we must do everything we can to speed construction and build more with less. This bill moves us in the opposite direction. I urge you instead to sit down with all the stakeholders in the affordable housing community to identify ways that we can work together to ensure that the adequate safeguards already in place are enforced and that affordable and supportive housing is built efficiently and ethically in New York City.

For more information call Ted Houghton at 646-619-9640.

Hobbs Ciena / MetroNorth

(New 9-story, 259 unit building; Rehabilitation of five 6-story buildings into single building)

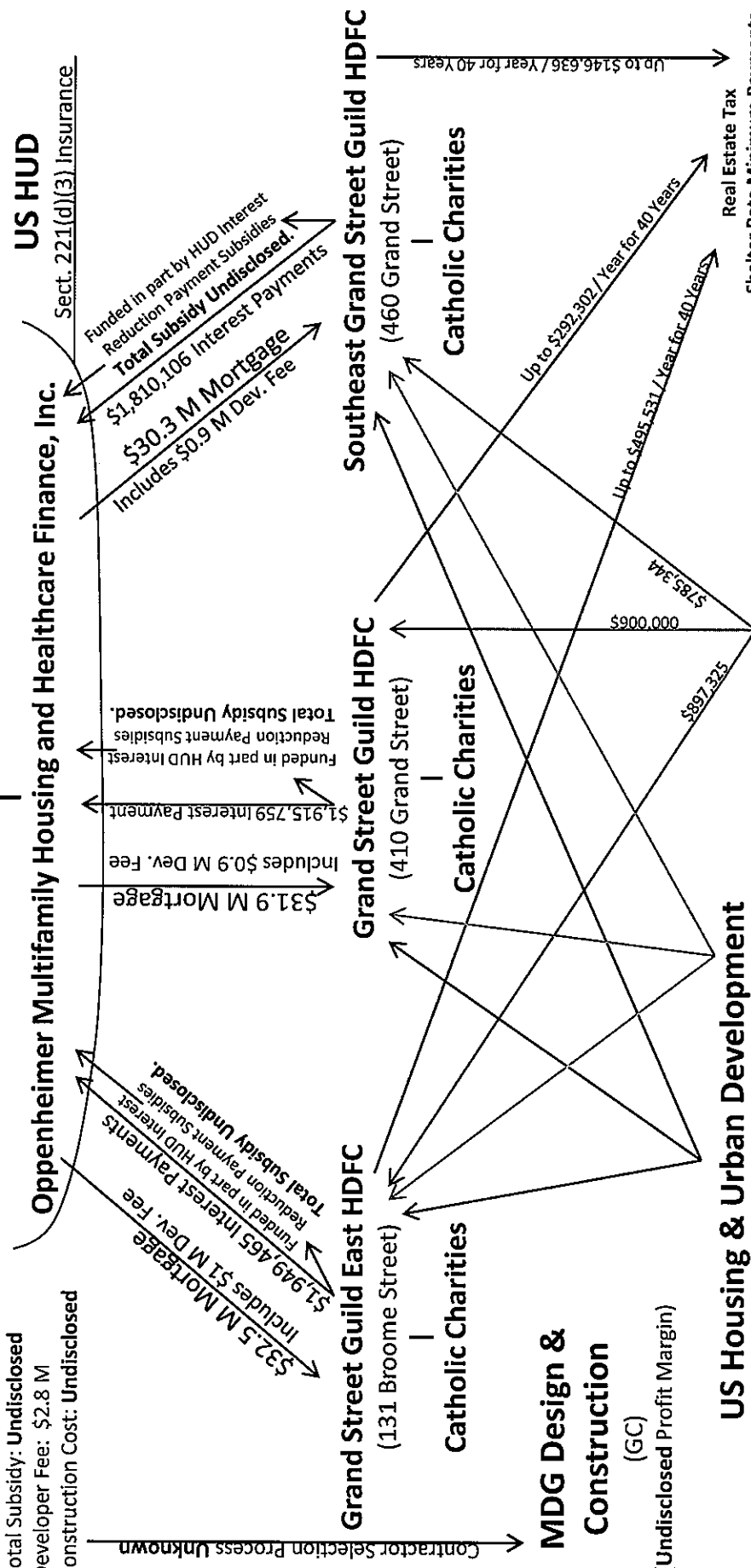


Grand Street Guild

(Renovations of three 26-story buildings, with a total of 600 units)

Total Development Cost: \$94.7 M
 Total Mortgage Payoff: Undisclosed
 Total Subsidy: Undisclosed
 Developer Fee: \$2.8 M
 Construction Cost: Undisclosed

Oppenheimer Holdings, Inc.



US HUD

Sect. 221(d)(3) Insurance
 Funded in part by HUD Interest Reduction Payment Subsidies
 Total Subsidy Undisclosed
 \$1,810,106 Interest Payments
 \$30.3 M Mortgage
 Includes \$0.9 M Dev. Fee

Funded in part by HUD Interest Reduction Payment Subsidies
 Total Subsidy Undisclosed
 \$1,915,759 Interest Payment
 Includes \$0.9 M Dev. Fee
 \$31.9 M Mortgage

Funded in part by HUD Interest Reduction Payment Subsidies
 Total Subsidy Undisclosed
 \$1,949,465 Interest Payments
 Includes \$1 M Dev. Fee
 \$32.5 M Mortgage

Grand Street Guild East HDFC (131 Broome Street)
 Grand Street Guild HDFC (410 Grand Street)
 Southeast Grand Street Guild HDFC (460 Grand Street)

Catholic Charities

Catholic Charities

Catholic Charities

MDG Design & Construction (GC)
 (Undisclosed Profit Margin)

US Housing & Urban Development

Sect. 236(e)(2) "Decoupling Transaction" Project is refinanced, but HUD mortgage subsidy is reapplied to new mortgage. On these mortgages there is an additional 20 years of Interest Reduction Payments negotiated, which reduce debt service from a 6.1% to as little as 1%.

Section 8 HAP Contracts
 Release from the City's future interest in the original HUD mortgage (2.6 M).

Real Estate Tax
 Shelter Rate Minimum Payments
 10% shelter rent for 40 years, but never more than straight tax and never less than exemption rate set in Regulatory Agreement
 In practice, tax on HAP Contracts. (Total 40 year value up to approx. \$37 M)

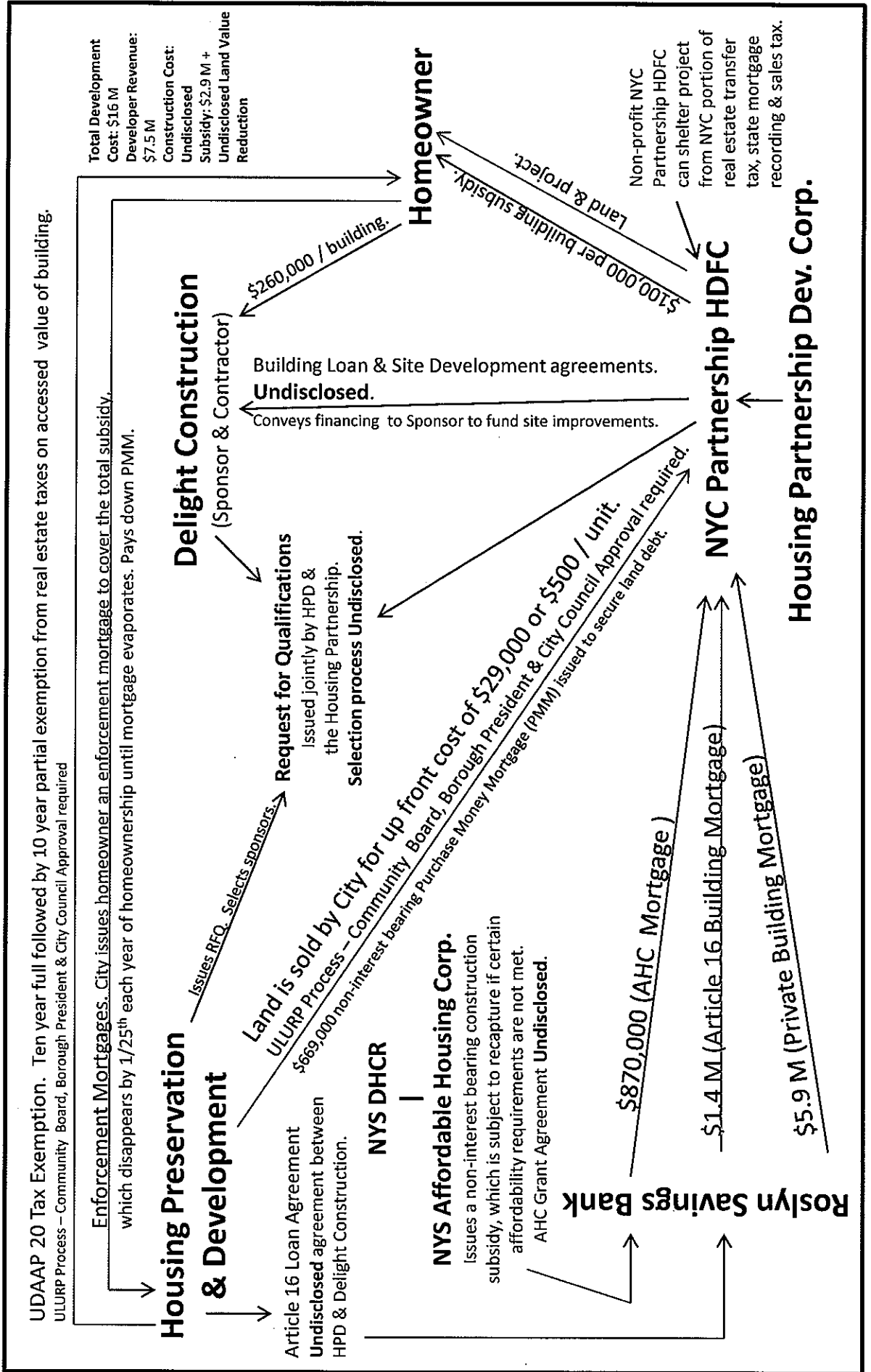
Up to \$146,636 / Year for 40 Years

Up to \$292,302 / Year for 40 Years

Up to \$495,531 / Year for 40 Years

Bedford Stuyvesant Partnership Homes

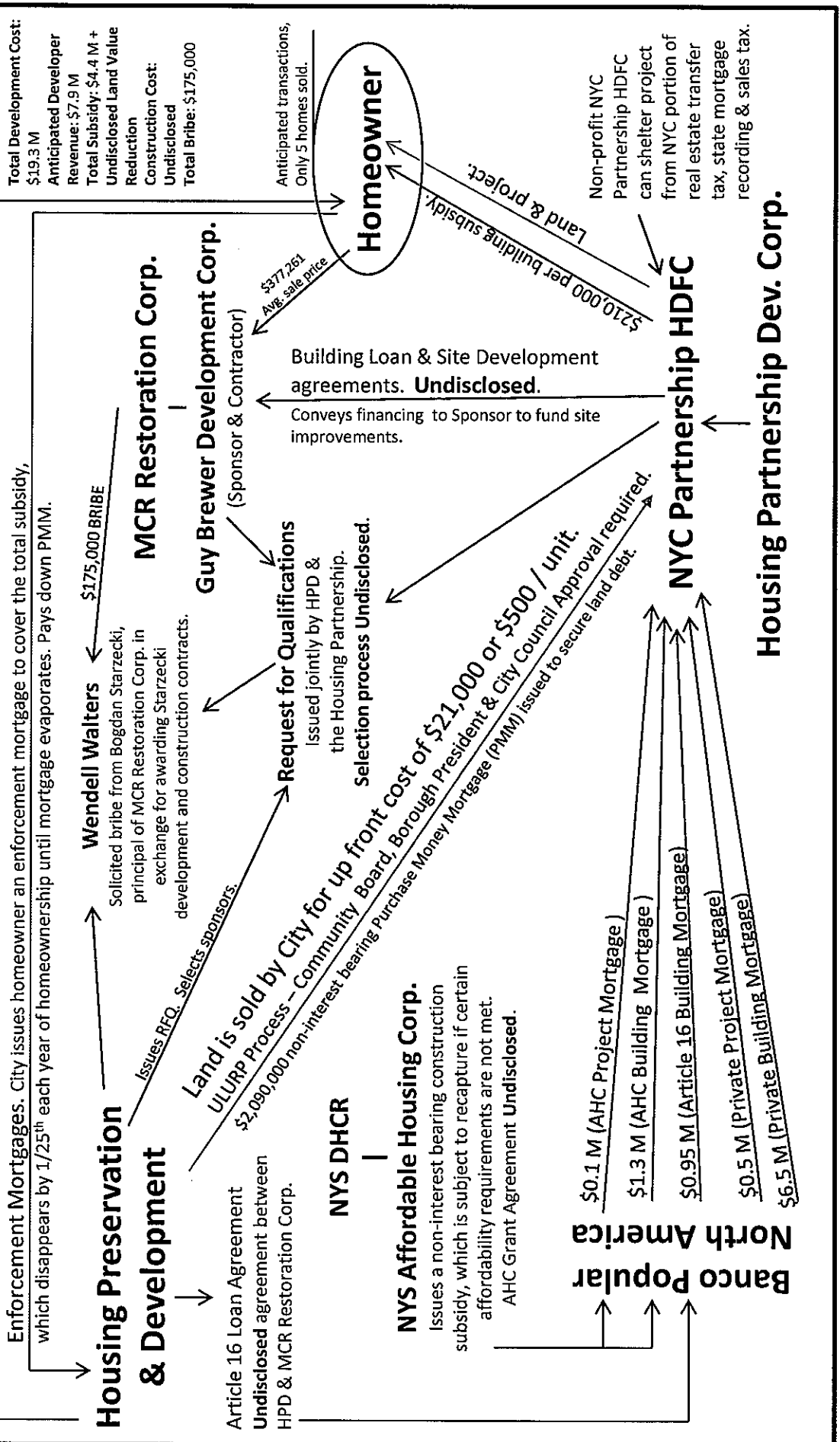
(29 new two-family homes)



Guy Brewer North Project

(21 new two-family homes)

UDAAP 20 Tax Exemption. Ten year full followed by 10 year partial exemption from real estate taxes on accessed value of building.
 ULURP Process - Community Board, Borough President & City Council Approval required





**Testimony before Housing & Buildings Committee of the New York City Council on Int. 730
January 30, 2012**

On behalf of the Real Estate Board of New York, representing nearly 12,000 owners, managers, developers and brokers of real property in the city of New York, I would like to thank the members of the Housing and Buildings Committee and Chairman Dilan for the opportunity to comment on Intro 730, a bill that requires the Department of Housing Preservation and Development to create a new database for HPD projects in order to disclose certain information and requires developers to disclose their wages to the Department. The goal of this legislation is to increase government transparency by expanding the reporting requirements for HPD's residential construction projects. However, it puts a heavy administrative burden on contractors and subcontractors, and will divert the limited resources available for affordable housing construction in order to fund the database creation.

Intro 730 covers all projects in contract with HPD or receiving HPD financial assistance of over \$100,000, including maintenance, repairs, alterations, building design, rehabilitation, and construction. It imposes a variety of new disclosures and administrative tasks on developers, contractors and sub-contractors. It requires HPD to gather weekly gross and net wage information for all participants hired on a project, including the developer's employees, the contractor and subcontractor, as well as any architects, attorneys, CPAs, engineers, and other professionals. Additionally, it would require HPD to create a database of all covered projects, where the dollar amount of each contract, including the original and revised expenditure allowed; the name, federal taxpayer identification number, and address of each principal owner and officer of every developer, contractor and subcontractor on the project; the total number of building code violations, the nature, and the outcome of the violations in the last 5 years; and any complaints, charges, and allegations within the past 5 years in any judicial actions or proceedings with regards to Section 220 of Article 8 would all be gathered.

This legislation creates a large administrative burden, especially for smaller developers, contractors, subcontractors and MWBE firms. Many of these smaller organizations lack the capability to track and report each individual project's accounting. As a result, this mandate heavily burdens smaller developers who are often engaged in outer borough projects where affordable housing is most needed. The affordable housing industry is already highly regulated, with multiple levels of government who monitor it, and the additional backstop of lenders and investors who keep a close eye on the project to ensure it is being done in a safe and legal manner. Last, the database that this legislation mandates will be very expensive and take away from the limited resources that HPD has to fund affordable housing projects. The information it requires is already publicly available through DOB's Buildings Information System (BIS) and other public resources. Therefore, the creation of this database would impede housing development, especially affordable housing and not add to the transparency of the contracting system currently in place.

For all of the reasons above, we strongly object to Intro 730. Again, as always, we thank you for the opportunity to present our questions and concerns.



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NICOLE VECCHIONE
JANUARY 30, 2012

Hello. My name is Nicole Vecchione and I am the Senior Strategic Researcher with the Laborers Eastern Region. Over the last five years I've worked on complex financial and real estate analysis in public agencies like the SCA, DASNY, as well as federal projects and public work in NY, NJ & DE. I have never seen a public entity with such convoluted procurement and financing and as lacking in transparency as HPD.

As an institution we have been researching HPD for five years and I've been looking at the agency for over a year. We were always told and accepted that there were gray areas in HPD financing and procurement. We understood the complexity of the system was so great that even within HPD, people only knew a portion of what was going on and no one had the full picture. We accepted this until the Wendell Walters scandal. Walters was the Assistant Commissioner for New Construction at HPD who was indicted by the federal government for selling projects to sponsors and builders. It is now apparent that the gray areas resulting from lack of transparency allowed inappropriate relationships and transactions to take place.

The charts I'm about to share with you are the financing and procurement structures of four projects, which are representative of a much larger body of work undertaken by HPD as part of the New Housing Marketplace plan. I will show you the gray areas we've identified and explain how this lack of information denies the public their right to know the total value of public subsidies invested into affordable housing projects and the true nature of relationships between HPD, sponsors, builders and financiers.

Hobbs Ciena

Hobbs Ciena is a part new construction, part rehabilitation project in Manhattan. The first thing I'll point out on this chart, which will be a trend on all the slides, is about the private financier. JP Morgan Chase provided a letter of credit for the sponsor in exchange for being assigned the first building mortgage issue by HDC – a \$72 million loan funded through bond revenue. The benefit to JP Morgan is indeterminable.

In this chart we can follow the lack of transparency to the eventual labor law infractions. The further down the line we go, from sponsor to general contractor to subcontractors, the less transparency and accountability exist. We believe this lack of transparency on the Hobbs Ciena project manifested into the illegal underpayment of workers. The US DOL has documented over \$1 million in back wages owed to workers.

Grand Street Guild

This second chart represents the refinancing and rehabilitation of three Mitchell Llama buildings in Manhattan. Again in this project there is no transparency on the financier selection. We do know the benefit to Oppenheimer Multifamily Housing & Healthcare, the private lender on the project, is 6.5% of loans worth about \$100 million. An indeterminable portion of this payment is derived from public subsidies provided by decoupling interest reduction payments and the release of HPD's future interest in the original mortgage. It is our belief that this lack of transparency, here and in Hobbs Ciena, denies the public their right to know what they are actually investing into affordable housing.

The sponsor selection on this project is not an issue because the three Housing Development Fund Corporation's (HDFC) are refinancing and rehabilitating buildings they already controlled. However, the selection as MDG Design & Construction as GC was not a transparent process. As with Hobbs Ciena, we again see laws being broken and worker exploitation. We have directed many workers from this project to the US DOL. It is my understanding the money illegally withheld from workers on this project is even more extensive. If contractor selection was open to public scrutiny, this might not be the case.

BedStuy Partnership Homes

The BedStuy Partnership Homes project is part of the New Homes Partnership program. The project sponsor and builder, Delight Construction, constructed 29 new two-family homes. One of these buildings was purchased by Shanita Wells, who is speaking after me about her experiences as a client of HPD.

Once again we have a financier where we are unclear about the selection process. In relation to the BedStuy Homes project, this is a significant issue because the direct public subsidies are passing through the bank, with no explanation as to what the bank receives in return. Additionally there is an unquantified land subsidy. The buildings are sold to Delight for a nominal fee and the balance of the land debt is eventually transferred to the homeowner in the form of a disappearing mortgage. It is the balance of this land debt that creates an unaccounted subsidy – at \$669,000 the property is being conveyed from the City for about \$23,000 per house – which is an indeterminable level below market rate. Again we see the true value of subsidies is hidden due to a lack of transparency.

Sponsor selection in the Partnership for New Homes program is conducted through a Request for Qualification process, which is unique to HPD. Sponsors apply to the program, are selected and paired with a project by HPD. This selection process is completely opaque and performed at the discretion of HPD.

Something that isn't reflected in this chart, but important to note, are that six homeowners, after signing purchase agreements with the City, were approached by HPD officials, including Wendell Walters, and asked to pay an additional \$10,000 per building. The reason for this request was apparent unanticipated costs to Delight during construction. \$60,000 is only a small portion of the total revenue this project generated for Delight Construction; but for each individual homeowner it represented 10% of the entire subsidy for their homes.

This is a clear example of how these gray areas contribute to inappropriate relationships between HPD and sponsors. This is important to remember as we move on to the final project.

Guy Brewer North

The Guy Brewer North Homes, is also part of the New Homes program. You'll see some significant similarities in funding sources as well as the same gaps in transparency. There are two significant additions to the chart. First, only five of these units have been sold, the rest are sitting vacant, despite many of them being completed over a year ago.

The second is the insertion of Wendell Walters into the RFQ process. Federal officials have attested that Walters approached MCR Restoration and solicited a bribe of \$250,000 to sell this project to MCR. Ultimately Walters received \$175,000. This bribe is significant not only because it represents corruption being masked by the lack of transparency, but it combats the fallacy of the razor-thin profit margins in affordable housing.

We often hear from people in the affordable housing industry that the reason for poor quality construction and worker underpayment is that there just isn't enough money. We have always had to accept this information and trust it to be true, as we did with HPD and all the gray areas in their financing. How could we prove any differently when it is continually impossible to determine the true value of subsidies being invested into these projects? We now know that there are accounted for and inappropriate transactions happening at these projects. We know the profit margins are at least great enough to support hundreds of thousands of dollars in bribes.

The public has the right to know the extent of public investment into affordable housing and how those funds are spent. We need to pass this transparency legislation to transform HPD from an agency that refuses to disclose information into an agency with accountability and a reformed and clear path of procurement and financial decisions.



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MEMORANDUM

TO: New York City Council, Committee on Housing and Buildings
FROM: James W. Versocki, Esq.
DATE: January 30, 2012
RE: Comments in Support of Int. 0730-2011 (A Local Law to amend the administrative code of the city of New York, in relation to the disclosure of certain information regarding certain construction projects)

I. Introduction:

My name is James W. Versocki and it is my pleasure to appear here to testify on this very important bill. I would like to thank Council Member Recchia for introducing this legislation and all of the council members here today for taking the time to hear from the public on this matter.

II. Investigative Background:

I have come here to testify today because of my personal experiences dealing with the construction industry, particularly in the realm of public works projects. For eight and a half years, I was an assistant attorney general in the Labor Bureau of the New York State Office of the Attorney General. During those years, we repeatedly investigated numerous contractors on public work projects for violations of labor laws, including the prevailing wage law (Article 8 of the Labor Law), workers compensation and unemployment insurance fraud, .

I have been in private practice for the last five years. Much of my practice focuses on representing workers in the construction industry who are not properly paid wages, including overtime and prevailing wages. I regularly conduct investigations of projects involving workers who have been underpaid, and have done numerous such investigations on behalf of workers who have worked on HPD projects.

III. Comments in Support

1. Transparency in Government Contracting Should be Encouraged

As a matter of good public policy, I support all legislation that opens the doors of government to the public. This is especially true of the Department of Housing Preservation and Development (HPD).

I have investigated numerous wage-and-hour cases on behalf of workers who have worked on HPD projects. Tracking down information for these workers – many who have not been paid wages they are owed on prevailing wage and non-prevailing wage projects – is extremely difficult. Unlike most agencies, HPD's project bidding and oversight structures are convoluted, to say the least. In most agencies, the public – and workers – have easy access to locate the names of the contracting agency, the developer/general contractor, and there is easy access to wage information – via required, on-site postings. Such information should be available to the most disadvantaged on these sites – generally the construction workers. Many of these workers are forced to work for day-laborer rates, without the benefit of workers' compensation or unemployment protections as they are paid cash and are therefore "off-the-books." Yet this is generally not the case on HPD projects.

This lack of transparency is even more surprising as HPD is an agency within the Mayors Office of Contracts (MOCS). MOCS administers the Vendex system and is a bastion for protecting the public fisc through the registering, monitoring, and, if necessary, disciplining, of contractors who violate wage, procurement, or other New York State, New York City, or federal regulations. Yet not all the developers and contractors working on HPD projects are filing out Vendex forms or reported on the Vendex system.

2. The Drafted Legislation is Appropriate and Not Burdensome on Those Accepting Government Assistance or on HPD

The primary responsibility for reporting under this legislation falls on HPD. Yet, all the requested information should be readily maintained by HPD and easily published. While there may be some initial administrative costs to establish the database for publishing the information, any such costs are well worth the expenditure of public dollars.

In addition, the legislation is appropriately tailored to only require disclosure relating to those entities receiving sufficient City incentives to trigger disclosure. Receiving \$100,000 in incentives towards the development of affordable housing is substantial as many of the projects will fall under that threshold.

The reporting requirements for any "contractors" on an HPD project are also not onerous. Providing basic information, including any background information involving prior or ongoing governmental investigations, is not burdensome and should be mandatory. The same is true for the wage reporting requirements; such information is required by law and could, and should, be produced.



3. Proposed § 6-116.3(d) Should Require Wage Reporting

Int. 0730-2011, quite properly, seeks to have developers, contractors, and sub-contractors:

prepare, maintain and file with the department the following information for each employee:

- (1) a description of the work performed by such employee in connection with the project; and
- (2) the weekly gross wages and weekly net wages paid to such employee by the developer, contractor or subcontractor for work performed in connection with the project and for each deduction from such wages, the amount and a description thereof.

The filing of such records should be mandated and not requested by HPD. Personal experience has shown that unscrupulous contractors, especially those not registered or effectively monitored, often engage in a race to the bottom mentality in which the lowest people on the totem-pole – workers – are not properly compensated for their work. Recent cases involving the Ciena Hobbs/Metro North project in Manhattan should be sufficient grounds for this requirement to be mandated. At the Ciena Hobbs project, Lettire Construction has been charged with failing to supervise its subcontractors who are alleged to have underpaid in excess of \$1,000,00.00 to workers.

HPD has allocated, administered, and supervised billions of dollars worth of affordable housing work over the last decade. Unfortunately, that work is often performed in a fashion little understood by the public and to the detriment of workers. This should stop. Basic wage-reporting – merely the filing of certified payroll records – should not be a burden on any contractor or developer, especially since they are required to maintain such records for payroll reporting and tax auditing. The only ones who would oppose such record-keeping are those who are not complying with the law. And they should not be building affordable housing utilizing federal, New York State, and New York City dollars or incentives.

IV. Closing

In an era of ever lower municipal budgets, it is imperative that monies from the public fiscal go to contractors who comply with the law. Adopting sound transparency and wage-reporting policies are about quality, integrity, and accountability in public contracting.

Thank you for taking the time to hear me speak today.

727783



NYSFAH

NEW YORK STATE ASSOCIATION FOR AFFORDABLE HOUSING
242 W. 36th Street, 3rd Floor • New York, New York 10018
Phone: 646-473-1205 • info@nysafah.org • www.nysafah.org

**Testimony to the New York City Council
Committee on Housing and Buildings on
Int. No. 730
January 30, 2012**

For the Record

The New York State Association for Affordable Housing (NYSFAH) opposes Intro 730, which would mandate that the New York City Department of Housing Preservation and Development (HPD) build and maintain a new database for HPD projects that places a tremendous and unnecessary administrative burden on contractors, subcontractors and MWBE firms. The cost of implementing this new mandate would divert limited housing resources, and is significantly duplicative of data that is already available.

Intro 730 mandates HPD obtain and update monthly for each HPD funded project the biweekly gross and net wages paid to employees of the project's developer, or any contractor or subcontractor that performs work on the project. Architects, attorneys, CPAs, consultants, engineers, subcontractors and other professionals engaged by the developer would be covered and subject to this wage reporting requirement. All projects over just \$100,000 would be covered, including those related to maintenance, repair, alteration, building design, rehabilitation, and construction.

Requiring this extensive reporting imposes a tremendous administrative burden on contractors, subcontractors and MWBE firms; many of these are small community-based businesses which simply do not have the capacity for this extensive reporting requirement. As the trade association for New York's affordable housing industry, NYSFAH has prioritized outreaching to and supporting emerging MWBE firms. The barriers to entry into this industry are already significant enough for a small business, given the administrative and regulatory burdens currently imposed by the many layers of oversight on affordable housing development – this includes monitoring by multiple city, state and federal government agencies, as well as lenders and investors. Intro 730 will make it even more challenging for MWBEs to succeed, and penalizes the community-based businesses that rely on affordable housing and other smaller development projects to maintain and grow their businesses.

Intro 730 also requires the creation of an expensive public database of information that includes the total number of building code violations on the project over the last five years, and the nature and outcome of the violation. The New York City Department of Buildings already collects this information; HPD should not be required to provide information that DOB already provides. In addition, Intro 730 requires the public database to include "complaints, charges and allegations within the prior five years in any judicial actions or proceedings with respect to section 220 of article 8." It is inappropriate to release to the public mere allegations made against developers and contractors, which may be baseless, without finding of culpability.

For these reasons, NYSFAH urges Council Members to oppose Intro 730. NYSFAH is the trade association for New York State's affordable housing industry, with 300 members statewide, including developers, lenders, investors, architects, attorneys, and others active in the development, financing and management of affordable housing. Together, NYSFAH members are responsible for virtually all of the housing built with city, state, or federal subsidies in New York.



Press
Photo
Records

AIA New York Chapter

Testimony on Int. No. 730

**A Local Law to amend the administrative code of the city of New York,
in relation to the disclosure of certain information regarding certain construction projects**

**New York City Council
Committee on Housing and Buildings
January 30, 2012**

We are here to comment on behalf of the American Institute of Architects New York Chapter and its nearly 5,000 architect and affiliate members based in Manhattan. We are deeply concerned with the potential impacts Int. 730 will have on our architect members who work on projects with the Department of Housing Preservation and Development.

While we support this legislation's overall goal of greater transparency in the contracting and purchasing of services and the identification of "bad actors" we believe the reporting requirements may be overreaching, onerous and duplicative. We have started outreach to our membership to identify and clarify all the potential issues but we offer some feedback below based on our preliminary analysis.

1. Architects who hold public contracts through the Department of Housing Preservation and Development have their contract information filed and these contracts are a matter of public record. In addition, all architects are already identified on a particular project when the project is filed with the Department of Buildings. It is redundant to require architectural firms to file this project information again as a contractor or subcontractor of a developer.
2. AIANY is concerned with the practice of reporting architects who have been denied prequalification. A firm ostensibly being placed in effect on a "blacklist" that may be negatively impacted in their ability to secure contracts from other potential clients. The fact that their name *does not* appear on a qualified list should effectively disincentivize a developer from securing their services without creating additional challenges for the firm.
3. AIANY questions why all employees who work on a project need to be listed. We also question, why their salaries need to be enumerated. It seems overreaching to know if a junior associate worked on a small portion of the project and what that person's salary associated with the project may have been. Breaking out all of these details and reporting them monthly would be onerous to all firms.
4. As a function of receiving HPD funding for projects the Department routinely seeks to understand the project costs and budget. Having already provided this information there is no additional value to be derived from knowing the exact fees paid month-to-month to architectural firms and their employees.
5. The definition of "principal officer", "principal owner" and "contractor" need to be clarified. Without further clarification, architectural firms who are engaged by the developer fall under the current definition and thus would be required to undertake the time consuming process of identifying and filing all the required information requested from the developer, contractors and subcontractors.
6. The impact of the project-by-project reporting requirement on smaller firms would disproportionately penalize these firms, many of which are struggling in the current economic situation.

In closing we ask that the Housing and Buildings Committee proceed slowly and carefully in its deliberations on this bill. The AIA New York Chapter is eager to assist the New York City Council in any way necessary to better understand the issues and find the right solution. Thank you again for giving the AIANY the opportunity to testify on this issue.



**For the Record*

**Testimony of Shola Olatoye, Deputy Director
New York Enterprise Community Partners, Inc.**

**New York City Committee on Housing and Buildings
Public Hearing on Intro 730**

January 30, 2012

Thank you for the opportunity to express our concern about Intro 730, a proposed local law that would add new contract reporting requirements for projects funded by the New York City Department of Housing Preservation and Development (HPD).

Enterprise Community Partners is a national nonprofit intermediary that provides capital and other assistance to support affordable housing and economic development in low-income urban and rural communities. Since our founding 30 years ago, Enterprise has deployed more than \$11 billion in equity, loans, and grants around the nation, supporting the creation of nearly 300,000 affordable homes and helping 6,000 low-income community businesses.

In New York City, Enterprise has created or preserved more than 32,000 affordable homes for 105,000 New Yorkers, and has committed nearly \$2.2 billion in equity, grants, and loans to community development projects since 1987. We work closely with HPD and other City agencies to support housing programs that are critical to the health of New York City neighborhoods.

These investments would not be possible without the hard work and support of HPD and our key nonprofit and private partners, including the many developers, architects, attorneys, CPAs, consultants, engineers, and contractors that we work with every day. Unfortunately, Intro 730 would add a costly reporting burden that would affect all of these stakeholders.

Under the proposed bill, any project over \$100,000 that is done solely, or in cooperation with, HPD would be subject to weekly gross wage and net wage reporting requirements. The burden of these new requirements would fall on HPD, as well as on the developers, contractors, and subcontractors that work with the City. Even projects related to maintenance, repair, and building alteration would be subject to the new requirements, placing a disproportionate burden on small, community-based firms who lack the infrastructure to comply with the complex and detailed reporting requirements of this bill.

Intro 730 also requires HPD to create and maintain a new database of project information. This would include a variety of data that is already documented by the City's Department of Buildings. We are concerned that the administrative costs of developing and maintaining this new system would divert limited resources away from affordable housing in a year during which HPD has already lost \$90 million in federal HOME and CD funds.



In today's economic climate, it remains more important than ever to support investments in affordable housing. Nearly 80 percent of low-income residents in New York State spend more than one-third of their household income on rent. Meanwhile, the number of units affordable to low-income households continues to fall, and federal housing programs have experienced severe and damaging cuts. The investment that New York City makes in affordable housing can provide jobs, create economically vibrant and sustainable neighborhoods, and provide access to opportunities for low and moderate income families.

For these reasons, we oppose Intro 730 and we urge the Committee not to target the affordable housing industry with costly and burdensome reporting requirements. Thank you again for the opportunity to comment on this important issue, and for your ongoing support for the affordable housing sector in New York City.

**TESTIMONY OF THE AMERICAN COUNCIL OF ENGINEERING COMPANIES
OF NEW YORK METROPOLITAN REGION
HOUSING AND BUILDINGS COMMITTEE PUBLIC HEARING
JANUARY 30, 2012**

The American Council of Engineering Companies of New York / Metropolitan Region (“ACEC New York”) is an organization representing leading professional design services firms. Founded in New York City in 1921, ACEC New York is one of the oldest continuing organizations of professional consulting engineers in the United States. ACEC New York represents 280 member firms throughout New York State that collectively employ more than 20,000 people statewide, with a concentrated presence of firms located within the five boroughs of New York City.

ACEC New York believes that the definition of the term “contractors” in Intro 730 is overly broad and should be revised to exclude technical professionals. As currently written, the term “contractors” includes any entity that contracts with a developer to perform work in connection with an HPD project. This expansive definition includes community consultants, engineers, lawyers, architects, and other professionals.

ACEC New York does not believe that it serves a public purpose to require technical professional firms to comply with the reporting and disclosure requirements contained in Intro 730. These professionals are not part of the Department of Housing Preservation and Development’s (“HPD”) prequalification process nor do they contract directly with HPD. There is simply no reason a technical professional firm should have to disclose the names and salary information for each employee who works on an HPD project. Consultant fees in total are a line item for soft costs in a particular development budget and are not reimbursed on a cost plus basis. The developer is at risk for any overruns, not the City. Furthermore, because subpart (b) of the bill appears to only apply to contractors and potential contractors on prequalified lists created by HPD, it is unclear as to whether the disclosure requirements are even applicable to technical professionals.

Additionally, ACEC New York is concerned that complying with Intro 730’s disclosure and reporting requirements may be an undue burden for small firms that perform work on HPD projects. For example, some smaller engineering firms contract with the developer to provide environmental testing or designs but do not install any of the physical systems. Under Intro 730, these firms would be subject to report, among other things, “all complaints, charges, allegations, judgments, injunctions or other relief filed or obtained within the prior five years in any judicial actions or proceedings.” Preparing and filing this type of information is a substantial task for a firm of any size and ACEC New York is concerned that smaller firms will no longer be able to compete for HPD work because of the onerous paperwork and privacy burden.

ACEC New York is available to work with the Housing and Buildings Committee and the New York City Council to draft this legislation in a way that excludes professionals who are not in the construction trade. However, in its current form, ACEC New York does not support Intro 730. Thank you for your consideration.



ANHD INC is a 501(c)(4) not-for-profit social welfare organization which advocates on behalf of New York City community-based, non-profit housing organizations and the neighborhoods they serve.

For THE RECORD

TESTIMONY OF MOSES GATES, CHAMP DIRECTOR, BEFORE
NEW YORK CITY COUNCIL HOUSING AND BUILDINGS COMMITTEE
REGARDING INTRO 730

January 30, 2012

Good Afternoon. My name is Moses Gates and I represent ANHD Inc. Thank you Chairman Dilan and Committee Members for the opportunity to testify about Intro 730, the transparency bill currently before the committee. We are supportive some aspects of Intro 730 in concept, but have a few serious concerns about the bill in its current form.

As you know, ANHD INC. is a not-for-profit social welfare organization which advocates on behalf of 97 New York City neighborhood-based housing groups - CDCs, affordable homeownership groups, supportive housing providers and community organizers. ANHD INC. advocates for comprehensive, progressive housing polices and programs to support affordable, flourishing neighborhoods for all New Yorkers, especially our lower income residents.

We are heartened that council is pursuing a policy of ensuring transparency when determining the disposition of public land and subsidy. HPD is the steward of a considerable amount of public resources, and the process and result of the disposition of these resources should be fully accessible to the public. While we believe that HPD has historically been and continues to be a fair and honest broker of these resources, more transparency and public oversight can only serve to ensure this continues, as well as discouraging unethical behavior.

We believe that, as a matter of public policy, HPD should be required to make easily and publically available the process and result of all dispositions of public land and subsidy, including the full applications of the awardees. As a comparison, the State HCR housing agency makes available the full applications of all awardees that obtain public subsidy through its consolidated funding process. We believe this is a good baseline for HPD to start with.

We would also suggest that, in addition to height, square footage and number of units, the bill specifically adds a breakdown of unit size and level of affordability or other such restrictions to the disclosure list. As these are already assembled as part of the marketing process, we do not believe this would add an undue reporting burden on HPD.

We would further note that city-owned land and property, or other land and property whose disposition is determined by HPD, is a considerable public resource, and that all dispositions of this property should be covered by this bill and disclosed in a timely manner.

We do, however, have some very serious concerns about other details of the bill. For example, the wage reporting requirements may have a burdensome effect on small, neighborhood-based businesses and should be targeted at appropriately-sized contracts so they are not overly burdensome to either small contractors or the agency. Additionally, requiring principles to submit their EIN numbers – which, in most cases, are the individual's Social Security Numbers – for public availability raises privacy concerns. While we believe the disclosures in the bill required by HPD are simple and easily complied with, we do not wish the reporting requirements to put an undue burden on the smaller, neighborhood-based owners, contractors, and subcontractors.

Overall, we applaud the goal of transparency and public oversight of public resources, and encourage Council to work with all stakeholders to craft a bill that advances this goal, while still allowing smaller stakeholders to compete for contracts without an undue reporting burden.

I would be happy to answer any questions.

Greenpoint Renaissance Enterprise Corporation

(718) 388-8915

grechosp@gmail.com

Good Afternoon, Councilmember Dilan and other distinguished Council committee members. We are David Dobosz and Benjamin Robles members of Greenpoint Renaissance Enterprise Corp (GREC). GREC is a coalition of North Brooklyn community groups which has been implementing a community based plan for the former Greenpoint Hospital and surrounding area for 30 years.

We are in support of Intro 730 and the important effort to bring disclosure and fairness to the opaque process now occurring at HPD in terms of allocating projects, city owned sites and funding for affordable housing.

North Brooklyn Community District #1 has consistently been the victim of HPD's opaque process to determine development and disposition of public properties. GREC itself has an Article 78 legal action against NYC HPD for the arbitrary and capricious decision to designate a flawed project and developer to develop the important Greenpoint Hospital property. During this process the City has:

- Issued an RFP in 2007 for the site, but delayed any action on designation until 2010 – a record delay for this Administration
- Refused repeated efforts by Community District #1 for review of applications and input on the selection Process
- In Spring 2010 – HPD designated a for-profit builder for the site – TNS/Great American and ignored a proposal of a local development team with a 30+ year esteemed track record of housing development in the community.
- A release of documents on a FOIL request demonstrated that HPD assisted their handpicked developer TNS/Great American to revise their proposal which would then make it competitive with the community applicant, St. Nicks Alliance. This undermined the fairness of the whole process.
- The TNS/Great American proposal, even after revision, provided fewer affordable housing units and required more government subsidy than the St. Nicks plan – but was still designated for the site – an outrageous failure to Protect the Public's Best interest – the use of public property and resources.
- More recently the Community has discovered that TNS/Great American is being investigated by the US Department of Labor and HPD for allegedly failing to pay workers over half a million dollars on HPD-funded projects.

GREC and thousands of local residents have called on HPD to remove their designation of TNS/Great American. We know that if the transparency provisions on project selection in this Intro 730 were in place in 2007, the

Conselyea St. Block Assoc. • Concerned Citizens of Withers St. & Area Block Assoc. • Cooper Park Neighbors Association • Cooper Park Resident Assoc. • Neighborhood Women of Williamsburg Greenpoint • Olive St Condo Association • School Settlement Association • St John's Lutheran Church Social Action Committee
St. Nicks Alliance • United Neighbors Organization • 37 Kingsland HDFC

community would be watching the construction of a building on this site right now by our local community development group, St. Nicks. Key aspects of the bill for GREC and the North Brooklyn Community:

- We want to see a transparent process of how projects/construction decisions are made by HPD
- We want to see a process where HPD must state how a decision will be made in RFP before beginning the RFP and then follow that process to make award. In the case of Greenpoint Hospital HPD said it would choose based upon least amount of government subsidy and maximum affordability but failed to follow those criteria.
- We want to have information available about the proposed developers seeking to building on public land and/or use public resources in our community. These buildings are impacting us as local residents and we want to make sure that builders will be maximizing benefits for residents not exploiting our community.
- We want to see quality affordable housing projects completed and have greater amount of housing available for low and moderate income NY'ers. Having disclosure of the proposed sources of funding insures that it is realistic and we can see which team is creating leverage or resources.
- Ultimately we want to see the City funds and public land being put responsibly into the projects and not for the excessive profits of builder/owners

The fact that HPD can determine developers for buildings in secret creates the opportunity for bad things to happen. The recent indictment of HPD Assistant Commissioner Walters and a group of private developers for payments in exchange for designation for project is prime example of a system with no public accountability.

Our neighborhoods deserves a system to develop public resources which is transparent and beyond reproach. GREC feels that Intro 730 is a good step toward that process.



St.Nicks Alliance

Where Opportunity Grows

Good Afternoon, Councilmember Dilan and other distinguished Council committee members. My Name is Frank Lang; I am the Director of Housing for St. Nicks Alliance a Community development corporation in Brooklyn. We have been providing services in the North Brooklyn neighborhoods including affordable housing for more than 36 years. Over that time we have built over 1,800 units of housing and current house more than 4,500 residents in our 1,100 units under management.

I am speaking in support of Intro 730 in the hope that it will bring greater transparency to a City agency, NYC Department of Housing Preservation and Development (HPD), has been operating in a way which encourages improper decision making and allocation of public resources. It is my understanding that the bill will require HPD to:

- 1) Declare the criteria by which selection of developers will be made prior to the issuance of a Request for Proposals or Request for Qualifications. This will make it apparent when the agency deviates from those criteria in selecting a designated company
- 2) State the basic details of proposals for development of a particular public project
 - a. Design of proposed developments - the height of buildings, square footage, and number of units
 - b. The financing proposed and any subsidy given or obtained by the city or other government agency
 - c. Name and contact information of development team members including name and title of principal officers and owners.
- 3) Publish the information about the final designated developer in more detail

It has been my professional experience that HPD's current system allows for capricious decision making or willful abuse and undermines the duty of the agency to be constantly minding the public welfare. In the past few years I have seen direct actions by HPD will call into question their decision making process:

- 1) In 2005 and 2006 St. Nicks Alliance received Community support to apply to NY State for financing of low income housing on City owned lots on Ten-Eyck and Maujer Streets. HPD refused to issue a site control letter for the St. Nicks which meant our application could not get funded. Today, the private developer designated in a questionable 2007 RFP for the sites has yet to close on their financing and the lots remain vacant. Our Community could have 35 more units of State funded affordable housing – instead it has vacant lots.
- 2) In 2005 and 2006 HPD also refused to work with St. Nicks on a plan to develop a community supported development for the Greenpoint Hospital site. Instead they issued that 2007 RFP and delayed following up on the site until 2010. In that year HPD designated a team lead by a private builder – TNS/Great American – to develop the site.

- 3) They ignored a substantial proposal by St. Nicks supported by more than 40 local community groups and calls by the local Community Board for input in the process. Only after information was received in a FOIL request was it discovered that HPD was coaching TNS/Great American – directing them to revise their proposal while the RFP process was still supposed to be under competitive review.
- 4) HPD has not transparent process to decide which developers would be designated for properties in their Third Party Transfer Program. In 2006, HPD designated a private for profit developer to develop a building managed for more than 10 years by St. Nicks Alliance in the HPD 7A program. No reason was given for not designating St. Nicks despite our unblemished track record and familiarity with the property. Ultimately HPD was not able to answer questions raised by City Council on this matter and decided to rightfully designate St. Nicks. Other community groups have worked with properties for many years that came into the TPT program only to see a private builder become designated to ultimately own and renovate the property.
- 5) HPD had not transparent process for designating properties in their Neighborhood Entrepreneurs Program (NEP) and Neighborhood Redevelopment Program (NRP). Over the more than 15 years of these parallel programs more properties and units have been designated for the for-profit builders in NEP for development than to the long time community based not-for-profits that have rebuilt our neighborhoods. It is the process of allocation in this HPD program and others in fact that has come under investigation by law enforcement. The lack of transparency in the process enabled unscrupulous HPD staff like accused Assistant Commissioner Walters and private builders to create an alleged system to steer lucrative projects in exchange for cash bribes.

The State of New York has a policy for the past few years of posting the winning applications for their Unified Funding for affordable housing programs on their website. I do not see why NYC can't be at the forefront of good government and transparency efforts that provide information about how it makes decisions on the allocation of public resources.

CPN

Shanita Wells
341 Clifton Place
Brooklyn, N. Y. 11216
(917) 817-9603

February 26, 2008

HPD
100 Gold Street
New York, N. Y. 10038

Dear Mr. Walters & Mr. Seif

This letter is to advise you that I am still experiencing problems in my home. They were indicated on my original punch list and have not been corrected in a workmanlike fashion. I have since submitted the required Notice of Warranty Claim Form in a timely fashion regarding potential mole and the following issues:

- My boiler has and continues to shut down repeatedly, especially during the coldest days and nights this winter. There is inadequate pressure from the pipes therefore the 1st floor is constantly cold. There is also an unexplained dangerous high pitched noise
- My roof has leaked, repeatedly, causing damage to the walls and ceilings of my unit and my tenant's. My most recent leak occurred February 19, 2008.
- Faulty pre-wiring has prevented my tenant from getting cable service in her living room.

I would like my boiler replaced so that I can adequately heat my home and prevent further illness. I would like my roof completely resurfaced to prevent future leaks and to prevent further damage to my home and property. I would also like the blue-prints so that future pre-wiring issues can hopefully be address by future qualified workmen.

I have repeatedly called Mr. Mohammed Aziz, of Delight Construction along with his subcontractors and have been completely ignored. I have requested the name and number of Mr. Aziz's attorney, but that request has gone unanswered. I hope we can resolve these issues amicably before I am forced to pursue legal action, get other agencies or officials involved, and notify the media.

I hope to receive a response to this communication as soon as possible with probable resolutions to my problems. Please do not hesitate to contact me at the above cell number.

Sincerely,
Shanita Wells

Cc: TBD

Shanita Wells
341 Clifton Place
Brooklyn, N. Y. 11216

January 23, 2009

Mr. Mohammed Aziz
Delight Construction Corp
1360 Fulton St
Brooklyn, N. Y. 11216

Dear Mr. Aziz:

This letter is a request for reimbursement of monies spent to resolve an ongoing problem with my Bed-Stuy Home. Since my first winter 2006, I have experienced leaks, heating problems, and resultant property damages. Each year the situation became progressively worse.

In February 2008 Wendell Walters, Assistant Commissioner, and Lenny Seif, Director of HPD instructed you to repair my leaks, heating problems, and property damage. However, you and your subcontractors were, seemingly, unwilling or unable to solve the problems. For example, you even told me the piercing noise coming from the boiler was normal.

Unfortunately, when I turned on the boiler this winter the leaks returned and the heat went out, for my self and my tenant, and my home sustained additional property damage. The noise, also, returned louder, longer, and more frequent. Consequently, a licensed plumber, who I had to hire, advised that my situation was potentially dangerous. Additionally, children reside in my home and were being exposed to unhealthy conditions because of the lack of heat and the water damage which could cause mold. Also, I must legally provide heat for my tenant during the cold weather.

Whenever, I called you, your office, or your subcontractors, my requests for help have been ignored. You have, continually, unheeded my numerous requests for a copy of the blueprints. This would have enabled a licensed, independent, contractor to see that there were pipes in the 2nd floor hallway (your subcontractor had insisted that there weren't any pipes in that location) and because there were pipes there and that was where one of the problems originated the condition persisted. The independent plumber that I was eventually forced to hire was the one who found the origins of the problematic heat and leaks and made the necessary repairs (which resolved the leaks, noise and lack of heat) and made it possible to finally make repairs to the resultant property damages.

To my dismay, it was revealed that the entire problem was created when your subcontractor punctured the heating pipe with a nail that was driven into the stud through the dry wall in the 2nd floor hallway. This was done during the original construction of the house. These problems could have been resolved 3 years ago when I initially

expressed my concerns. Most recently my tenant had a leak from the roof into her bedroom, and there are now cracks in the ceilings in nearly every room. Since the problems have existed while I was still under warranty Delight Construction is still responsible. And the negligence of your subcontractors is also a responsibility of Delight Construction.

I am writing to request reimbursement for all the expenses associated with the repairs. Also the cost of labor and material to stop the leaks, noise, and repair of the resultant property damages.

Please contact me ASAP to discuss full reimbursement of all associated costs. You can reach me at 917 817-9603.

Sincerely yours,

Shanita Wells

Cc: Shaun Donovan, HPD
Wendell Walters, HPD
Lenny Seif, HPD
Elizabeth Hayes, New York Daily News
Elected Officials
BBB
Consumer Affairs
District Attorney Office
Public Advocate Office



341 Clifton Place
Brooklyn, N. Y. 11216
May 21, 2009

Gabrielle Jones
HPD
100 Gold Street
New York, N. Y. 10038

Dear Gabrielle,

I am in receipt of the packet showing items corrected by Delight Construction. What these pages reflect are items that were corrected while I was still under warranty or items that were repeatedly patched in a poor manner. What I see is the results of my constant battle over poor workmanship

I closed on 3/16/2006. One of the papers reflect a caulking of my front stoop 6/8/07, which is while I was still under warranty. Anything addressed on my Punch-List, or while I was still under warranty is still the responsibility of Aziz Mohammed of Delight Construction. These items were repeatedly repaired after I was forced to complain to HPD. HPD contracted with Delight Construction and were well aware of my perpetual issues. I have a saved message on my cell as proof.

What is not reflected is the common problems that have plagued numerous homeowners and tenants in the Bedford Stuyvesant Homes. I represent the homeowners that can not speak for themselves because Delight has ignored them because English is their second language. I represent the homeowners that did not know that they should stand up for their rights. These problems are reducing our quality of life.

- We all have smaller water tanks than legally specified in the blueprints
- We all have sheds that constantly leak and are molded. This prevents proper use & several have had property ruined in their sheds.
- We all lack industry grade insulation in the floors, façades & rear walls. This causes extremely cold bedrooms in the winter.
- We all have heating and water pipes that were not sealed, which allowed for vermin & insect infestation.
- We all have poor quality windows that are drafty, leaky, or inoperable, which were supposed to be replaced 2 years ago.
- We all have expired warranties on a boiler which is supposed to be covered for 5 years.
- We all have supposedly new roofs that have leaked on countless occasions. And the Khan T & J Construction that holds our 10 year warranty had to be forced to come to make repairs, which was repaired in a less than workmanlike fashion.
- We all have dryer hook-ups yet no dryer vents to exhaust dangerous fumes and dust.
- Some have doors that are not properly aligned.
- Some have improper wiring were there is no cable signals in certain rooms, nor electricity in sockets.

These are lauded as "Affordable Homes," yet we have been forced to pay for several of our own repairs. I believe Delight Construction & HPD should be held responsible to resolve these pre-existing issues. Or we will be forced to make costly repairs above and beyond normal maintenance. Thereby making our "Affordable Homes" not so affordable for the 10 years we are forced to live here.

These issues pre-existed the expiration of our warranties. Repairs made for one should be repairs made for all. Please contact the other homeowners and tenants to cooperate our saga. I am encouraged that you are now involved. It is imperative that you thoroughly investigate our concerns of impropriety. Thank you for your compassion and objectiveness. Please call me at 917 817-9603.

Yours truly,

A handwritten signature in cursive script that reads "Shanita Wells".

Shanita Wells

copy
Shanita Wells
341 Clifton Place
Brooklyn, N. Y. 11216
May 25, 2010

Mr. Mohammed Aziz
Delight Construction Corp
1360 Fulton St
Brooklyn, N. Y. 11216

Dear Mr. Aziz:

As a follow-up to our conversation, I am writing to remind you of the leaks at both 339 and 341 Clifton Place. Several weeks ago you informed us that the leaks and damages would be repaired. We were advised that our ceilings would be opened to place installation under the awning as a possible solution to our problems.

Please keep in mind this is the 4th time we have had leaks in the same location since our closing in 2006. We have been awaiting solution to the problem and the follow-up repair of the damages to our respective ceilings. We have been eagerly awaiting a prompt response. However, up to now we have not heard back from you. Please contact me at 917 817-9603 and Mrs. Li at 718 809-6481 or 718 622-3730. Thanks for your cooperation.

Sincerely yours,

Sue Li
Shanita Wells

P.S. We have discovered gaps and waves in the siding on the rear of our homes. We hope these issues will be addressed and repaired.

Shanita Wells
341 Clifton Place
Brooklyn, N. Y. 11216

Mr. Mohammed Aziz
Delight Construction Corp
1360 Fulton St
Brooklyn, N. Y. 11216

Dear Mr. Aziz:

This letter is a request for help resolving an ongoing problem. Since my first winter of 2006 in my Bed-Stuy Home I have experienced leaks, heating problems, and property damages. And each year the problem became progressively worse.

During the winter of February 2008 Wendell Wendell, Assistant Commissioner, and Lenny Seif, Director HPD instructed you to repair my leak, heating, and property damage. However, you and your subcontractors were unwilling or unable to solve the actual problem. You even told me the piercing noise coming from the boiler was normal.

Unfortunately, when I turned on the boiler this winter the leak returned, the heat went out for my self and my tenant, and I sustained property damage yet again. And that noise returned louder, longer, and more frequent. Consequently, a licensed technician advised that my situation was potentially dangerous.

I have children in my home that can not go without heat during the winter. And by law I must provide my tenant with heat during the winter. When I called you, your company, and your subcontractors my requests for help were ignored. You ignored my numerous requests for a copy of the blueprints which would have allowed me to see that there were pipes in the 2nd floor hallway. Even your subcontractor told me there were no pipes in that wall, so the problems persisted. Therefore, I was forced to hire a licensed contractor. This contractor helped me find and repair the origin of the problems, which alleviated the leaks, noise, heating, and property damages.

The entire problem was created when your subcontractor punctured the heating pipe with a nail that was driven into the stud through the dry wall in the 2nd floor hallway. This was done during the original construction of the house. These problems could have been resolved 3 years earlier when I initially expressed my concerns. Since the problem has existed while I was still under warranty Delight Construction is still responsible.

I am writing to request reimbursement for all the expenses associated with maintenance of the boiler. Also the cost of labor and material to stop the leak, noise, and repairing the damage. Please contact me ASAP to discuss full reimbursement of all associated costs. You can reach me at 917 817-9603.

Sincerely yours,

Shanita Wells

Cc: Shaun Donovan, Dept of Buildings
Wendell Wendell, Dept of Buildings
Lenny Seif, Dept of Buildings
Elizabeth Hayes, New York Daily News
Elected Officials
BBB
Consumer Affairs

Copy

Shanita Wells
341 Clifton Place
Brooklyn, N. Y. 11216
June 5, 2010

Mr. Mohammed Aziz
Delight Construction Corp
1360 Fulton St
Brooklyn, N. Y. 11216

Dear Mr. Aziz:

I am writing regarding the siding on the back of my home. According to my records I have complained on several occasions about my siding being warped and having gaps. Since my closing in 2006 your subcontractors have placed numerous house nails and screws in my siding. These regular nails and screws have rusted. They are causing damage to my siding and potential water damage.

The damage to my siding occurred while I was still under warranty. And only your contractors have attempted poor workmanlike repairs. This makes Delight Construction Corp responsible for any future claims. In the past I have requested complete removal and replacement of the sub-quality siding. I am now officially requesting a licensed siding expert to come remove and replace the damaged siding. I am requesting a prompt response and corrective action. My reach number is (917) 817-9603. Thank you for your cooperation.

Sincerely,

Shanita Wells

copy

Mr. Mohammed Aziz
Delight Construction Corp
1360 Fulton St
Brooklyn, N. Y. 11216

1360 Fulton St

Shanita Wells
341 Clifton Place
Brooklyn, N. Y. 11216
August 5, 2010

Dear Mr. Aziz:

I am writing this letter to request a resolution to several problems. I have experienced repeated leaks in my living room. I believe it may be caused by leaks coming through the brick face on the front façade of the house. The brick face is wavy and has been since my closing. You once offered to reface the brick I would now like to take you up on your offer. I would like to have the brick face re-pointed. I am also requesting the repair of the damaged ceiling in my living room caused by the leak.

I am also writing regarding the siding on the back of my house. There are several nails placed in the siding that are beginning to rust. This can cause a potential leak issue in the future. I am requesting replacing the damaged siding.

On July 23, 2010 your office called to arrange for a meeting between you and I. However, you did not come to my home as scheduled, and no one followed up to advise me of any cancellation or rescheduling. I am eagerly awaiting a new meeting to be scheduled. Please call me as soon as possible to arrange for a visual inspection and resolution. My reach number is (917) 817-9603. Thank you for your cooperation.

Sincerely,

Shanita Wells

CC Jasleen Anand, Esq
Lenny Sief, HPD

#254
copy

SCHEDULE B

NOTICE OF WARRANTY CLAIM FORM

Dear Purchaser:

To ask the Builder to correct a defect in your Home that you think is covered by the Builder's Limited Warranty, you must complete this form and deliver it to the Builder. This is necessary to protect your rights to warranty performance under the Limited Warranty. Even if you believe that the Builder is aware of the problem, fill out this form and deliver it to the Builder.

The information you will need to fill out the form will be on page 1 of the Limited Warranty. However, if you do not know the answers to any questions, write "Don't know." Please do not leave any item blank.

Your Name: Shanita Wells

Mailing Address: 341 Clifton Pl Brooklyn, N.Y. 11216

Phone: (718) 443-4645 (H) *(917) 817-9603 (C)

Warranty Date: 3/13/06

Describe the defect(s) which you think are covered by the Limited Warranty. Be sure to include when each defect first occurred or when you first noticed it. Use additional sheets, as necessary, to fully describe the problem:

Shanita Wells
(signature)

3/1/07
(date)

(signature)

(date)

NOTE: THIS COMPLETED AND SIGNED FORM MUST BE DELIVERED TO THE BUILDER AS FOLLOWS: (1) BY HAND, WITH A WRITTEN ACKNOWLEDGEMENT RECEIPT FROM THE BUILDER, OR (2) BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED. YOUR RIGHTS TO WARRANTY COVERAGE UNDER THIS LIMITED WARRANTY WILL BE VOIDED UNLESS YOU STRICTLY COMPLY WITH ALL OF THE PROCEDURES SET FORTH IN PARAGRAPH 13 OF THIS LIMITED WARRANTY.



Department of
Housing Preservation and
Development
nyc.gov/hpd

RAFAEL E. CESTERO
Commissioner
HOLLY M. LEIGHT
Deputy Commissioner
WENDELL B. WALTERS
Assistant Commissioner

Office of Development
New Construction
100 Gold Street
New York, N.Y. 10038

March 3, 2011

Aboubaker Sangare
152 Lexington Avenue
Brooklyn, NY 11216

Re: Beford Stuyvesant Partnership Project
152 Lexington Avenue Inspection

Dear Sir/Madam:

This letter is to inform you that the Department of Housing Preservation and Development (HPD) would like to conduct an inspection of your home on March 23, 2011 at 11:00 am.

If you are not available for the above day and time, please have someone there who knows what the issues are and can relate them to HPD.

Please call me at (212) 863-5930 to let me know if you or someone else will be home that day. Thank you for your cooperation in this matter.

Sincerely,

Daphne Mitchell
Project Manager
Division of New Construction

- C. L. Self (HPD)
M. Polo (HPD)
Robert Knight (DACE)
Mohammed Aziz (Delight Construction Corp)

TESTIMONY OF LEONEL LOPEZ

My name is Leonel Lopez. I am a Union member who was hired to work on non-union job sites by contractors. When employed at these jobs, I keep track of the hours I work, the days I am paid, the type of work I perform, and other information about the project. During that time I have worked on HPD jobs and on jobs for other public agencies and for private owners too.

During the last year, I worked at an HPD project known as the Grand Street Guild project in Manhattan. I worked there as a laborer and a painter. This was a large renovation project at three sites. At this job, I was moved between companies, including a company called "Omega" and "New York Acoustic." I was paid \$120 per day for my work with no benefits. I know this project was a prevailing wage project where I should have received the prevailing wage rate for my work, approximately \$57 per hour. I never received a pay stub or check for my work on these projects because the companies foreman would make us sign our paychecks, they would then cash them, and pay us in cash for less than what was on the check. This is known as a kickback of wages. There were no postings on the project that it was a prevailing wage job and all of the other workers I worked with were paid the same way – we had to sign our checks and kick-back wages. In addition, I was required to work the first three weeks without pay and was paid in the fourth week for my work.

I worked for months receiving these illegal wages on City funded HPD projects. I can't believe that workers are paid in cash, with no taxes withheld, no pay-stubs, and no government oversight. This is a transparency hearing and I want to thank all of you for holding it. I can't believe that a tax payer funded agency is allowed to operate like this where workers on the projects are totally in the dark.

TESTIMONY OF JONNY ZETA

My name is Jonny Zeta. I am a Union member who was hired to work on non-union job sites by contractors. When employed at these jobs, I keep track of the hours I work, the days I am paid, the type of work I perform, and other information about the project. During that time I have worked on HPD jobs and on jobs for other public agencies and for private owners too.

During the last year, I have worked on at least three different HPD projects. HPD jobs are the only ones where workers like me don't even know who we are working for at the start of the job. I was paid cash -- \$12 per hour -- for my work at these HPD projects. I worked for different companies, including a company called "Skyline," another called "Metro," and another called "MC&O." I know some of these projects were prevailing wage projects where I should have received the prevailing wage rate for my work. I never received a pay stub or check for my work on these projects. There were no postings on the project that it was a prevailing wage job and all of the other workers I worked with were paid the same way -- in cash. I worked at projects in Brooklyn and the Bronx.

I worked for months receiving these illegal wages on City funded HPD projects. I can't believe that workers are paid in cash, with no taxes withheld, no pay-stubs, and no government oversight. This is a transparency hearing and I want to thank all of you for holding it. I can't believe that a tax payer funded agency is allowed to operate like this where workers on the projects are totally in the dark.

TESTIMONY OF BENEDITO FLORES

My name is Benedito Flores. I have worked on at least five HPD jobs that I know of. I usually perform bricklayer's work. I worked at HPD projects located at ~~125th Street in the Bronx~~, ^{198th St} Street in the Bronx, Crooke Avenue in the Bronx, and at 1165 Elton Avenue in Brooklyn.

Some of the contractors I worked for were named Larino and JAB Masonry, which I think was a subcontractor to Cheever Construction. At these HPD projects, I was always paid \$120 per day for my work. I was paid this rate even if the job was a prevailing wage job. I was never paid overtime wages for overtime work even though I was required to work a lot of overtime on these projects. On non-prevailing wage jobs I would be paid cash for my work. But on prevailing wage jobs, I would be paid by check but the contactors would always never report the true hours I actually worked. I know these projects were prevailing wage projects where I should have received the prevailing wage rate for my work but I had no way to complain about my wages. There were no postings on the project that it was a prevailing wage job and all of the other workers I worked with were paid the same way – in cash or by having their hours cut.

I worked for months receiving these illegal wages on City funded HPD projects. I can't believe that workers are paid in cash, with no taxes withheld, no pay-stubs, and no government oversight. This is a transparency hearing and I want to thank all of you for holding it. I can't believe that a tax payer funded agency is allowed to operate like this where workers on the projects are totally in the dark.

My name is Jose Castillo, and I am here today because my family purchased a home through the HPD New Homes program and we are experiencing serious issues in the quality of our home. It is my hope that transparency in HPD would help us, our block association, and the countless others who are experiencing the same kinds of problems, to achieve a resolution.

My mother and father won the lottery and a chance at the American Dream. As an immigrant family 90's in search of the American Dream, and they have worked as hard as anybody to reach this "Dream". The family home is on Phelan Place in the Bronx. Every single home in this development is experiencing serious leaks from the roof. Pots and pans cover the floor to capture the melting snow in the winter. At first, not knowing our new neighbors, every one on the block contacted the developer individually. He would send people with a caulk gun or a small bucket of tar, but the leaks only worsened. We formed a block association and contacted HPD about the issue. At one point the architect stood up on our roof and said that they were not built to the specifications of his plans. But when we approached him to put that in writing he declined, worried it could affect his future work with the developer and the partnership.

We pooled our limited resources to hire an independent engineer. In his report he stated that at least the back 20 feet of the roof was pitched incorrectly, causing water to pool in the center as opposed to running off the back, and would need to be replaced to correct the problem. We contacted HPD and met again with the developer. This time he promised to remedy the situation correctly. But again the repair was as shoddy as the initial construction, addressing less than three feet at the edge of the roof. The leaks returned immediately.

We also began working with a housing advocate, and here is where I come to the issue of transparency in HPD. She requested information on other homeowner complaints, and issues with our developer, via FOILS submitted to HPD. We were hoping that the information would help us in negotiating a better resolution. But HPD claimed to have no such correspondences or records. We as homeowners know this isn't true because we contacted HPD about our issues. Where then is this information being kept? Why is it that my family cannot access it?

My parents came here from the Dominican Republic. We all know that becoming a homeowner is the American Dream, and to enter a lottery process and win that opportunity from the government is a dream come true. But when my family bought their house they trusted the city to have their best interests in mind, not those of the developer. The developer blames the roofer, the roofer blames the developer, sub contractors have since claimed bankruptcy and re-opened under new names, and no information is being made available to us, the tax-paying citizens of New York. The application process for these homes – overseen by HPD, is long and arduous, and the financial requirements are rigid. I only ask that the same scrutiny be put upon the developer and that information be shared with the homeowners, who in the end are the ones entering into a contract with them.

The developer tells us we should be more grateful, that we got a good deal. He constantly quotes our purchase price and asks “where else could you get a house for so cheap?” But he fails to calculate the land he received from the city for next to nothing, and the subsidy provided which sits at the top of our mortgages, often making it difficult to take out any sort of loan for home repairs – which he has clearly made necessary, and requiring that we occupy the homes for twenty years. My family would be happy to occupy the home for generations to come if it would just do one basic thing - keep us dry. We need to transparency to protect the hard working families who purchase these homes. Without information we are powerless to protect ourselves from predatory developers who seem more interested in stealing from workers than creating quality homes.

Shanita Wells – Transparency Legislation Testimonial.

January 30, 2012

I purchased my “affordable” home in 2006. I say quote unquote affordable because after living there just 5 years there are many issues in the construction that have revealed themselves to be very costly to repair. These are not typical home maintenance issues one could expect to see in a brand new home, but far more serious structural issues, which would be costly even to root out the cause of, let alone repair.

My home was built as part of the New Housing Marketplace plan put forth by Mayor Bloomberg and administered by HPD. As I said, there are many issues with my home, and the homes of every one of my neighbors - which I would be happy to share with you, but today I am here to speak in favor of transparency, and why it would directly help me, and the hundreds of other homeowners who are in my situation. Potential new HPD homeowners deserve to make an informed decision when embarking on a long-term financial investment and commitment to occupy HPD housing. I would like to share with you how lack of transparency within HPD has personally contributed to my financial hardships, detracted from my quality of life, and destroyed the enjoyment of my first home.

Just after closing on my home I began to notice problems. The contracting company repeatedly ignored my concerns. I began reaching out to officials at HPD for help, but they too delivered little more than verbal commitments which were never realized. After many years of ongoing correspondence between myself, my neighbors, and HPD, and the city finally conceded to perform an inspection. HPD official Lenny Seif, Director of the New Homes program, and HPD Architect Mr. Park came to my home, and those of a few of my neighbors, to conduct an inspection. The inspection was conducted in March of 2011, and we were told that the results would be made available to us in a timely fashion. It was our hope that the inspection would point out the issues which were outstanding since the day of our move in. Weeks and then months began to pass. We called and emailed HPD asking when we could expect the reports. “Oh they are coming” we were told. “We’re working on them.”

Nine months passed and no inspections were supplied. HPD again scheduled a visit to our homes. Lenny Seif, Mr. Park, and the two principles of the development company Delight Construction arrived together. We again asked when we would receive the reports. This time both officials from HPD scoffed at us and said "No, we're not going to supply those reports to you, those reports are confidential."

Even when you purchase a car, you can get a CarFax report of the history of the car. But in our city sponsored and tax-payer funded housing program here in New York, blueprints are not being made readily available, inspection reports are not being furnished, in fact many times people are told that if they bring in their own inspectors before closing the deal is off the table.

I have since come to discoverer that Delight Construction had other problems in their development history with affordable housing before they built my home. They were unable to obtain Certificates of Occupancy for a group of homes in my very same neighborhood due to issues in construction and have had problems with wage violations for non-payment of workers. Why then were they given the contracts to build our homes? This information should have been made available to me as a tax payer and a potential homeowner. I have had years worth of correspondences with HPD in regards to quality issues with my home, and yet HPD claims to have no records of this and continues to give the contractor more and more projects.

It is my impression that HPD sees itself as much more of a partner with developers than an advocate for the very people of this city who pay their salaries. We need transparency to be able to inform ourselves before venturing forth on a path to the American Dream of homeownership, and prevent it from becoming a nightmare. It's just good government, plain and simple.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: Jan 30, 2012

(PLEASE PRINT)

Name: STHELIA MARTIN

Address: 90 HPDC 242 W 36 ST.

I represent: Housing Partners in Development Corp

Address: 242 W 36 ST NY NY 10018

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 730 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Robert Scarborough

Address: 222 Bloomingdale Rd, White Plains

I represent: NYSAFAH

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 730 Res. No. _____

in favor in opposition

Date: 1/30/12

(PLEASE PRINT)

Name: TED HOUGHTON

Address: 247 W. 37th St #18451 NY NY 10018

I represent: SUPPORTIVE HOUSING NETWORK OF NY

Address: 175 Ave

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Harvey Epstein

Address: 172 East 4th St

I represent: Urban Justice Center

Address: 123 Williams Street

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Karin Hutson

Address: _____

I represent: NYSAFAH Genesis Companies

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Kendrick Jobe

Address: Shelton Foundation

I represent: Housing Partnership

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Kendrik Toke

Address: Kendrick Development

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1-30-2012

(PLEASE PRINT)

Name: Moses Gates

Address: 50 Broad St.

I represent: ANHD

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 730 Res. No. _____

in favor in opposition

Date: 1/30/12

(PLEASE PRINT)

Name: Ben Robles

Address: _____

I represent: GREC

Address: 2 KINGSLAND

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: DAVID DEBOSZ / BEN ROBBES

Address: _____

I represent: GREC

Address: 2 KINGSLAND AVE

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1/30/12

(PLEASE PRINT)

Name: FRANK LANG

Address: 2 KINGSLAND

I represent: ST NICKS ALLIANCE

Address: SEM

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 750 Res. No. _____

in favor in opposition

Date: 01/30/12

(PLEASE PRINT)

Name: MIKE MCGUIRE

Address: 266 W 5TH

I represent: MASON TENDERS DC

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: MARION WANKUT

Address: COMMUNIST

I represent: NIPD

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: RUHANE VISNAUSKAUS

Address: 10th COMMUNIST

I represent: NIPD

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 11/30/2012

(PLEASE PRINT)

Name: JOSE CASTILLO

Address: 2025 WALTON AVE BRONX NY 10453

I represent: HOME OWNER (PARENTS)

Address: 1875 Phelan Pl, Bx NY 10453

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Nicole Vecchio

Address: 520 8th Ave, NY, NY 10018

I represent: Labors Eastern Region

Address: same

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Shanita Wells

Address: 341 Clifton Pl BKLYN, NY 11216

I represent: Union Myself Homeowner

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 730-11 Res. No. _____

in favor in opposition

Date: 1/30/12

(PLEASE PRINT)

Name: JAMES W VERSOCKI, ESQ.

Address: Archer Byington Gleason / Louisa, LLP

I represent: General Public and Workers

Address: _____

One Huntington Quadrangle, Suite 4010, Metville
NY 11747

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1-30-12

(PLEASE PRINT)

Name: BENEDICTO FLORES

Address: 101-EAST 101 ST

I represent: MYSELF

Address: E-101

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 0730 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: JOHNNY ZETA

Address: 149 CHESTNUT ST NEWARK

I represent: Self

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: JAN-30-2012

Name: LEONEL (PLEASE PRINT) LOPEZ

Address: 44 MORGAN AVE PART 2R

I represent: LOCAL 79

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 730 Res. No. _____

in favor in opposition

Date: 1/30/12

(PLEASE PRINT)

Name: Anthony Bartolacci

Address: 277 Park Avenue

I represent: American Council of Engineering Companies

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 730 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Mathew Wambua, Commissioner

Address: 100 Gold Street

I represent: HPO

Address: 100 Gold Street

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 730 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Robert S Altman

Address: 27 Whitehall St., 4th Fl., NY, NY

I represent: QBBA / BIANYC

Address: _____

Please complete this card and return to the Sergeant-at-Arms